E.D. NO. 49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of<br><br>UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br><br>UNION COUNTY EMPLOYEES LOCAL 550, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO<br>Petitioner<br>and<br><br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-337 |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br><br>UNION COUNTY EMPLOYEES LOCAL 550, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO<br>Petitioner<br>and<br><br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-338 |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br><br>LOCAL 286, INTERNATIONAL BROTHERHOOD OF TEAMSTERS<br>Petitioner<br>and<br><br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-423 |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br><br>LICENSED PRACTICAL NURSES ASSOCIATION<br>Petitioner<br>and<br><br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-395 |

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| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br>UNION COUNTY DETENTION CENTER EMPLOYEES<br>Petitioner<br>and<br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-405 |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br>UNION COUNTY COURT CLERKS ASSOCIATION<br>Petitioner<br>and<br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-415 |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS<br>Public Employer<br>and<br>INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 866<br>Petitioner<br>and<br>UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION<br>Intervenor | Docket No. RO-438 |

## DECISION

Pursuant to a Notice of Hearing, a hearing was conducted to resolve questions concerning the representation of certain employees of the Union County Board of Chosen Freeholders in the consolidated matters captioned above. All parties were afforded the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Post-hearing briefs were filed by the Union County Board of Chosen Freeholders ("County"), Union Council 8, N.J. Civil Service Association ("Council 8"), Local 550, Service

Employees International Union, AFL-CIO ("Local 550"), the Licensed Practical Nurses Association and the Union County Detention Center Employees.

Hearing Officer Maurice S. Trotta's[1/] Report and Recommendation, attached hereto and made a part hereof, is dated August 28, 1973. Thereafter, timely exceptions were filed by Local 550, by the Licensed Practical Nurses Association, by the Union County Detention Center Employees and by Local 866, International Brotherhood of Teamsters. A reply to the above exceptions was filed by Council 8.

The undersigned has considered the entire record in this case, the briefs, the Hearing Officer's Report and Recommendation, the exceptions and reply thereto, and finds as follows:

1. The Union County Board of Chosen Freeholders is a public employer within the meaning of the Act and is subject to its provisions.

2. Local 550, Service Employees International Union, AFL-CIO; the Licensed Practical Nurses Association; the Union County Detention Center Employees; the Union County Court Clerks Association; Local 286, International Brotherhood of Teamsters; Local 866, International Brotherhood of Teamsters and Union Council 8, New Jersey Civil Service Association are employee representatives within the meaning of the Act.

3. The above-captioned petitioners have asked to be certified as the exclusive representatives of the units of public employees specified below. There are, therefore, questions concerning the representation of public employees and the matter is properly before the undersigned.

Petitions were filed by the following organizations on the dates indicated seeking to represent employees in the units as described. The

1/ Mr. Trotta was substituted for the original Hearing Officer in accordance with Section 19:14-2.2 of the Commission's Rules.

numbers in parentheses indicate the approximate number of employees in each unit.

1. Docket No. RO-337, Local 550, filed August 25, 1971, blue collar employees of the Roads, Bridges and Engineering Departments, (90).

2. Docket No. RO-338, Local 550, filed August 25, 1971, building maintenance employees at Court House and Venere Building, (80).

3. Docket No. RO-395, Licensed Practical Nurses Association, filed January 5, 1972, licensed practical nurses at Runnells Hospital (30).

4. Docket No. RO-405, Union County Detention Center Employees, filed January 11, 1972, children's supervisors, (30).

5. Docket No. RO-415, Union County Court Clerks Association, filed February 14, 1972, court clerks, (14).[2/]

6. Docket No. RO-423, Local 286, IBT, filed February 28, 1972, maintenance workers at the Court House, (45).[3/]

7. Docket No. RO-438, Local 866, IBT, filed March 23, 1972, court clerks, (14).

At the present time Council 8 represents blue collar and white collar employees of Union County.[4/] This resulted from a consent election agreement signed by the County, Council 8, Local 550, and Stationary Locals 68-68A-

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2/ According to the Hearing Officer's Report and Recommendation, this petition was withdrawn. The undersigned hereby approves that withdrawal. However, subsequently Local 866, IBT filed a petition to represent these employees. (Hearing Officer's Report and Recommendation, p. 4)

3/ This petition was not pursued. The attorney of record, although notified of all hearings, did not appear. (Hearing Officer's Report and Recommendation, p. 4)

4/ The Public Employment Relations Commission issued a Certification of Representative March 13, 1970 certifying Council 8 as the exclusive representative of all employees of Union County excluding blue collar employees. The Commission issued a second certification July 2, 1970 certifying Council 8 as the exclusive representative of all employees in the following unit: "All employees employed by the County of Union including all blue collar employees, i.e., those employed in the Department of Roads, Bridges, Engineering, Public Property, The Shade Tree Commission and at John E. Runnells Hospital (food

(continued)

68B of the International Union of Operating Engineers and approved by the Executive Director February 16, 1970. Under the terms of this agreement, three units were established. In general terms, these may be described as a craft unit, a blue collar unit, and a white collar unit. The craft unit is not at issue herein. With respect to the blue collar unit, "Council 8", "Local 550", and "Neither" appeared as choices on the ballot. It was agreed that if a majority of employees cast ballots for Local 550, then that would constitute a separate appropriate unit. However, if a majority of blue collar employees cast ballots for Council 8, those ballots would be pooled with the ballots of white collar employees. This election was held March 4, 1970. Thereafter, timely objections were filed by Local 550 in connection with the election among blue collar employees. While resolution of these objections was pending, a certification was issued covering white collar employees. Subsequently, the parties agreed to set aside the election in the blue collar unit and to the conduct of a second election. In this second election, Council 8 received a majority of valid ballots cast and was certified as the exclusive representative in the unit quoted in footnote 4 above.

In accordance with the certification described above, a contract was signed between Council 8 and the County December 10, 1970 for the period between January 1, 1970 and December 31, 1971.[5/] Similarly, a second contract covering the employees in the certified unit was signed July 13, 1972 for the period between January 1, 1972 and December 31, 1973.[6/]

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4/ (Continued) service workers, cooks, butchers, institutional attendants, practical nurses and other blue collar workers), but excluding craft employees, professional employees, policemen, correction officers, managerial executives and supervisors within the meaning of the Act."

5/ Exhibit P.E.-1.

6/ Exhibit P.E.-2.

All of the above petitions were timely filed. The first two, RO-337 and RO-338, were filed between 120 and 150 days before the contract covering the years 1970 and 1971 expired.[7/] All of the other petitions were filed subsequent to the expiration of the 1970-1971 agreement and prior to the execution of the 1972-1973 agreement.

Council 8 is an intervenor in all of these matters by virtue of the outstanding certification and by virtue of the then existing or then recently expired agreement covering the groups of employees in each of the instant petitions.

The positions of the several petitioners are similar. Each asserts that the unit sought is appropriate and each claims that the employees sought have not been adequately or properly represented by Council 8 in terms of contract negotiations and administration. Additionally, the Licensed Practical Nurses Association contends that the licensed practical nurses are professional employees and therefore entitled to separate representation.[8/] Also, the employees of the Detention Center claim that they are law enforcement

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7/ Although the Commission's rule on timeliness then in effect required the filing of a petition 120 to 150 days before the last date for budget submission in the second year of the agreement in a situation such as the instant one, no petitions would have been able to meet this requirement because that 30 day period transpired prior to the signing of the contract December 10, 1970. Accordingly, in the absence of a meaningful budget submission date in this situation, timeliness will be determined with reference to the expiration date of the agreement. Using this measure, the two petitions were timely filed. The Commission's Rules regarding timeliness were subsequently amended to delete all references to budget submission dates.

8/ The New Jersey Employer-Employee Relations Act 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 shall be appropriate which includes...both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit..." N.J.S.A. 34:13A-6(d).

officers and, as such, should be in a separate unit.[9/]

It is the position of Council 8 that all of the petitions should be dismissed. Several reasons are offered to support this position. First, it is argued that, Local 550 having agreed to the appropriateness of the blue collar unit and, depending upon the outcome of the election, the overall blue collar and white collar unit in 1970, they cannot now change that position. Second, it claimed that the resulting fragmentation would be contrary to the Rules of the Commission. Third, it is argued that the other petitioners failed to intervene in the earlier proceedings and now there is a history in the overall unit. Fourth, it is claimed there has been no showing of improper representation by the petitioners. Fifth, the testimony allegedly shows affirmatively that Council 8 has offered employees in the unit proper representation.

The County also urges dismissal of the instant petitions. It is the County's position that the present unit is appropriate and that there is no evidence of improper representation or grievance handling.

The Hearing Officer recommended, after considering factors such as the history of negotiations, desire of employees, fairness of representation, community of interest and fragmentation, that the instant petitions be dismissed.

As indicated, exceptions to the Hearing Officer's Report and Recommendation were filed by several parties. These will be discussed below. Because all of the exceptions have to do with the question of the type of representation afforded to the employees sought in this matter, that issue

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9/ The statute provides that, "...except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership." N.J.S.A. 34:13A-5.3

will be treated generally at the outset.

The Supreme Court of New Jersey in a decision in which it upheld the constitutionality of Chapter 303, Laws of 1968, discussed this question in its consideration of the legality of an exclusive representative:

> The exclusivity concept carries with it an equally heavy responsibility toward dissident employees in the unit as for employee-members of the representative organization. Although the representative has the sole right to negotiate and consummate a contract respecting the terms and conditions of employment and the processing of grievances for all employees in the unit, the right to do so must always be exercised with complete good faith, with honesty of purpose and without unfair discrimination against a dissident employee or group of employees. This is true not only in the negotiating of the employer-employee agreement but in its administration as well. 10/

The Court cited approvingly a leading federal case on the question of fair representation wherein the U. S. Supreme Court stated that "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 11/

The same principal applies regarding contract negotiation. A Michigan Circuit Court summarized the law in this area: "The law basically says that the union should have broad discretion in negotiating contracts, weighing advantages and disadvantages of different proposals, and that to allow every dissatisfied person to challenge the validity of certain contracts without showing a strong indication of a breach of the duty to fairly represent, would create havoc in the field of labor law." 12/

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10/ Lullo v. International Association of Fire Fighters, 55 N.J. 409 at 427.
11/ Vaca v. Sipes, 64 LRRM 2369 at 2376.
12/ McGrail v. Detroit Federation of Teachers, 82 LRRM 2623 at 2624.

The Public Employment Relations Commission in an earlier case addressed this issue in the form of a policy statement:

> The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to a re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest. (Emphasis added) 13/

This statement is consistent with both the Lullo decision and various federal court decisions including Vaca v. Sipes.

While there is evidence of dissatisfaction with the representation of Council 8 according to the testimony of witnesses for the several petitioners, the undersigned agrees with the Hearing Officer for the reasons cited by him that the record does not support a finding that Council 8 has failed to provide responsible representation with respect either to contract administration or negotiation. Although there has been little recognition of the special problems of particular groups of employees within the overall unit as reflected in the 1970-1971 and 1972-1973 agreements between the County and Council 8, those agreements have provided for across-the-board increases in salaries of $600 in 1970, $500 in 1971, $400 in 1972, and $400 in 1973. Most other provisions of the contracts apply uniformly to all unit members. Accordingly, with few exceptions, the relationships among jobs which existed prior to the certi-

13/ Jefferson Township Board of Education, P.E.R.C. No. 61 (October 22, 1971).

fication of Council 8 have not been altered subsequently.[14/] Accordingly, the above-captioned petitions will not be granted on the basis of improper, irresponsible, arbitrary, or bad faith representation on the part of Council 8 vis-a-vis either contract negotiations or administration. For the purposes of this discussion, it has not been necessary to determine whether there is a community of interest among the employees within each unit sought. However, without granting the appropriateness of the units sought, none of these petitions will be dismissed because the units sought are inappropriate.[15/]

Turning now to the more specific exceptions, these will be considered individually. Local 550 has claimed that the Commission violated due process by incorporating other matters into proceedings already under way. (The first two days of hearing in this matter involved only the two units sought by Local 550. The other petitions either had not been filed at the time or had not yet been consolidated.) This petitioner urges that this alleged violation of due process be remedied by extracting that portion of the record which relates only to Local 550 and its direct adversary and weight, consider, and adjudicate on that portion by itself.

Section 19:15-1.1(b) of the Commission's Rules specifically authorizes the Executive Director to consolidate proceedings. In this regard, it should be pointed out that one other petitioner, Teamsters Local 286, filed for a unit covering some of the employees sought by Local 550 in one of its

14/ It is recognized that flat dollar increases (such as have resulted from the two rounds of negotiations between Council 8 and the County to date) as opposed to percentage increases reduce the percentage differential between higher and lower paying jobs. Thus, lower paid employees have received a greater percentage increase.

15/ It should be pointed out that the appropriateness of three of the units sought - the two sought by Local 550 and the unit of maintenance workers at the Court House sought by Local 286, IBT - is highly questionable. Each seeks a unit which is less than county-wide in scope and is, therefore, inconsistent with the units found appropriate by the Commission in Board of Freeholders of the County of Burlington, P.E.R.C. No. 58, (August 11, 1971) and in Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (June 21, 1972).

petitions. Additionally, the positions of both the County and Council 8 are virtually the same with respect to each of the petitions. Thus, costs and duplications were minimized by the consolidation.

Nevertheless, the undersigned has carefully considered each petition separately on its merits in this decision. The structure of the Hearing Officer's Report and Recommendation indicates that he, too, considered each petition separately. For these reasons, this exception is dismissed.

The exceptions filed on behalf of the Licensed Practical Nurses Association relate primarily to the claimed status of the practical nurses as professional employees and to the unique community of interest which they allegedly enjoy as well as to the claim of unfair representation received by the practical nurses from Council 8.

The question of representation by Council 8 has been disposed of in the discussion above and it has been stated that no petitions will be dismissed because the units sought by the petitioners were found to be inappropriate for purposes of collective negotiation. Therefore, there remains the question of the professional status of the practical nurses. If practical nurses are found to be professional employees, then they would be entitled, if they desired, to representation apart from non-professional employees.[16/]

The petitioner relies upon the case of Madeira Nursing Center, 83 LRRM 1033 (1973) with regard to this issue. In the Madeira case, however, the National Labor Relations Board did not dispose of the question of the status of practical nurses as professional employees. The Board stated in a footnote that, "In view of our conclusion of LPN's on the above ground, the

16/ See footnote 5/.

RN's are excluded on the same ground and it is unnecessary to determine herein the issue raised by the Employer as to their status as professional employees." (Emphasis added)[17/] Therefore, this case does not support the contention of the LPNA that practical nurses are professional employees.

Chapter 303, Laws of 1968 does not contain a definition of "professional" employee nor did the Commission's Rules at the time this matter was heard. The Commission has since adopted, effective March 7, 1974, the following definition of "professional employee":

> "Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers, and the various types of physical, chemical and biological scientists." [18/]

In a previous decision,[19/] the Executive Director adopted, pro forma, the recommendation of a Hearing Officer that a definition of "professional" identical to that contained in the National Labor Relations Act be utilized. That definition follows:

> "(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such character

17/ Madeira Nursing Center, 83 LRRM at 1035.
18/ N.J.A.C. 19:10-1.1
19/ Bergen County Welfare Board, E.D. No. 22, (November 6, 1970).

> that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes." 20/

The Nursing Practice Act of New Jersey 21/ sets forth the qualifications for practical nursing including the following: an applicant must be at least 18 years of age and must have completed two years of high school or the equivalent. Additionally, a course of study in an approved school of practical nursing must have been completed. A license may be obtained by examination, by endorsement, or by waiver under certain circumstances. 22/

This is in contrast with the qualifications for professional nurses which include the holding of a diploma from an accredited four-year high school or the equivalent thereof and completion of a course of professional nursing study in an accredited school of professional nursing. 23/

The conclusion that practical nurses are professional employees would be inconsistent with the definition of professional employee contained in the Labor-Management Relations Act or the Commission's Rules as well as with the language of the Nursing Practice Act. Accordingly, the exception is found to be without merit and it is dismissed.

In the exceptions filed on behalf of the Detention Center Employees, it is claimed that several of the factors cited by the Hearing Officer

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20/ Labor-Management Relations Act, 1947, as Amended, Section 2 (12).
21/ N.J.S.A. 45:11-23 et seq. Administrative notice of this Act is hereby taken.
22/ N.J.S.A. 45:11-27.
23/ N.J.S.A. 45:11-26.

in determining the appropriateness of the units sought were improper. (Exceptions 1 and 4) The second exception relates to the applicability of the Vaca v. Sipes case in determining the issue of fair representation. The petitioner contends that the pertinent issues are the instability of the existing relationship and whether the incumbent is providing responsible representation. The second issue has been disposed of and the first need not be considered because no petition will be dismissed on the basis that the unit sought is not appropriate.

The third exception of this petitioner is that the employees sought to be represented by the Detention Center Employees lack a community of interest with the other titles represented by Council 8, that the employees are neither blue collar nor white collar employees, and that there is no interchangeability with other County employees. The undersigned rejects the contention that employees of the Detention Center lack a community of interest with other county employees. The record indicates that these employees have been included in the unit represented by Council 8 and that they were eligible to vote in the election which led to their certification.[24/] The benefits of these employees are similar to those of other unit employees, and there is no record evidence of a conflict of interest between those and other unit employees.

Accordingly, the exceptions filed on behalf of the Detention Center Employees are dismissed in their entirety. However, before leaving this group of employees, mention should be made of their status. Although the Hearing Officer did not find these employees to be policemen and no exceptions were filed regarding his failure to so find, the petitioner did argue in his brief that these employees are policemen and are thus required to have separate

24/ Administrative notice is hereby taken of the voting roster in Union County Board of Chosen Freeholders, Docket No. RO-33.

representation.[25] Suffice it to say that the record does not support the conclusion that these employees are policemen, the Hearing Officer did not find them to be policemen, and no exception was filed on that basis.

The final set of exceptions was filed on behalf of the court clerks. It is claimed that the employer of the court clerks is different from the employer of the other classifications in the unit represented by Council 8.[26] The appointing authority is claimed to be the County Clerk as opposed to the Board of Chosen Freeholders. While the testimony is uncontroverted that the appointing authority is not the Board of Chosen Freeholders, this does not mean that the Board of Chosen Freeholders is not the employer of court clerks. Aside from the contention that there is a separate appointing authority for the court clerks, there is no evidence that the Board of Chosen Freeholders is not the employer of the court clerks. No contrary claim was made during the hearing by either this petitioner or by Counsel for the Board of Chosen Freeholders.[27] The exception does not cite any support in the record for the position that the Court Clerk is the employer of court clerks.

The undersigned is satisfied that, on the basis of this record, there is no evidence to support a finding that court clerks are employees of other than the Board of Chosen Freeholders.

The next exception is that court clerks were included in the

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25/ See footnote 6/.

26/ This is the first time that this claim was raised. It should be noted that the petitioner listed the employer of court clerks as the County of Union on its petition.

27/ After this hearing had closed, a letter was received from the County Clerk. Although this letter is not part of the record and although the Hearing Officer was instructed not to consider this letter, it is noted that the County Clerk did not claim that the employer of the court clerks was other than the Board of Chosen Freeholders.

overall unit in error. There is no evidence to support this claim and it is dismissed.[28/]

Third, it is stated that the community of interest is not prevalent, that court clerks are not interdependent upon any other group, that there are no lines of progression, demotion, or transfer to other groups. As indicated above, no petition will be disposed of on the basis that the unit sought is inappropriate. Furthermore, the record indicates that court clerks do share a community of interest with other unit members including common benefits.

Fourth, it is claimed that the decision of the Commission in Jefferson Township which the Hearing Officer cited to support his recommendation does not apply, apparently because the bus drivers in Jefferson Township voluntarily become part of the bargaining unit whereas the court clerks in the instant matter not only did not voluntarily affiliate but made every effort not to be included. This exception is without merit because Jefferson Township has been cited only for the proposition that appropriate units will not be disturbed absent a showing that the relationship is unstable or that the incumbent has not provided responsible representation. The Jefferson Township decision is apposite in that context.

Finally, it is argued that Chapter 303, Laws of 1968 should not be a tool to make negotiations convenient for the employer but rather that it should allow employees to obtain proper and voluntary representation through an election. Chapter 303 is intended to promote harmony and peace in employer-

28/ It should be noted that court clerks appeared on the voting roster in the white-collar unit. Administrative notice of this list has previously been taken.

employee relations.[29] Its purpose is to permit the representation of public employees for purposes of collective negotiations in appropriate units. The decision herein is consistent with that goal and there is no evidence that the Hearing Officer based his recommendation on any other considerations.

Having considered and disposed of each of the exceptions filed in this matter and having found insufficient evidence to warrant the severance of any of the units sought on the basis of arbitrary or irresponsible representation by the incumbent, we turn now to a consideration of the appropriateness of the overall unit consisting of blue collar and white collar employees. As previously reported, that unit resulted from the fact that the same employee organization was successful in elections for both blue collar and white collar employees and from the resulting certification issued by the Commission. Consistent therewith, the County and Council 8 entered into two two-year contracts covering the majority of eligible County employees.[30]

While the record confirms that this previously certified overall unit is appropriate, the record suggests that units of blue collar and white collar employees also would be appropriate. This would be consistent with the previously discussed agreement of the County, Council 8 and Local 550 in the earlier proceedings before the Commission as well as with previous decisions of the Commission involving county employees.[31] However, none of the peti-

29/ See Board of Education of the Town of West Orange, 57 N.J. 404 at 424.

30/ The record indicates that Union County employs approximately 1600 people. About 800 of these are included in Council 8's county-wide blue collar and white collar unit. Additionally, there are 11 other units which have been recognized or certified in Union County. Most of these units were developed in order to comply with various statutory criteria not germane to this decision. Another 400 to 500 employees are not represented at this time. Additionally, there are approximately 125 employees who apparently are not eligible for representation. (TR 9-14-72, pp. 177-188)

31/ Burlington County Board of Chosen Freeholders, P.E.R.C. No. 58, (August 11, 1971) and Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69, (June 21, 1972).

tioners in this proceeding is seeking to represent either all blue collar or all white collar employees in separate units.

The undersigned concludes for the reasons above that each of the petitions not previously withdrawn be and are hereby dismissed.

BY ORDER OF THE EXECUTIVE DIRECTOR

Jeffrey B. Tener
Acting Executive Director

DATED: Trenton, New Jersey
May 24, 1974

STATE OF NEW JERSEY

PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of:

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| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>Union County Employees Local 550, S.E.I.U., AFL-CIO<br>Petitioner<br>and<br>Union Council 8, N.J. Civil Service Association<br>Intervenor | DOCKET NO. RO-337 |
| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>Union County Employees Local 550, S.E.I.U., AFL-CIO<br>Petitioner<br>and<br>Union Council 8, N.J. Civil Service Association<br>Intervenor | DOCKET NO. RO-338 |
| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>Local 286, International Brotherhood of Teamsters<br>Petitioner<br>and<br>Union Council 8, N.J. Civil Service Association<br>Intervenor | DOCKET NO. RO-423 |

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| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>Licensed Practical Nurses Association<br>Petitioner<br>and<br>Union Council 8, N.J. Civil Service Association<br>Intervenor | DOCKET NO. RO-395 |
| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>Union County Detention Center Employees<br>Petitioner<br>and<br>Union Council 8, N.J. Civil Service Association<br>Intervenor | DOCKET NO. RO-405 |
| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>Union County Court Clerks Association<br>Petitioner<br>and<br>Union Council 8, N.J. Civil Service Association<br>Intervenor | DOCKET NO. RO-415 |
| Union County Board of Chosen Freeholders<br>Public Employer<br>and<br>International Brotherhood of Teamsters Local 866<br>Petitioner | DOCKET NO. RO-438 |

## APPEARANCES

For Union County Board of Chosen Freeholders
O'Brien, Doaleman, Liotta and Musatello
By Carmine Liotta, Esq.

For Union Council 8, New Jersey Civil Service Association
Fox and Fox
By David I. Fox, Esq.

For Union County Employees, Local 550, Service Employees International Union, AFL-CIO
Rothbard, Harris & Oxfeld
By Abraham L. Friedman, Esq.

For Licensed Practical Nurses Association
Simandl, Leff, Kraemer and Waldor
By Daniel Leff, Esq.

For International Brotherhood of Teamsters Local 866
Leonard Conte, Secretary Treasurer Local 866, IBT

For Union County Detention Center Employees
Weisinger, Allen and Associates, Inc.
By Robert S. Weisinger, Esq.

## REPORT AND RECOMMENDATIONS

These proceedings commenced with the filing of two petitions (Docket Nos. 337, 338) on August 25, 1971 by Union County Employees Local 550, Service Employees International Union, AFL-CIO seeking to represent certain groups of employees, more particularly defined below, which were then represented by Union Council 8, N.J. Civil Service Association.

On October 27, 1971 and February 8, 1972, Hearing Officer Jeffrey B. Tenner conducted hearings on these two petitions which were consolidated by order dated September 24, 1971.

Subsequently five additional petitions were filed and given Docket Nos. RO-423, 395, 405, 415 and 438. These cases were consolidated by orders dated March 7, 1972, March 21, 1972 and April 24, 1972.

On March 21, 1972 the Public Employment Relations Commission designated Maurice S. Trotta as Hearing Officer for the consolidated cases. Fourteen hearings were held beginning on March 27, 1972 and ending December 20, 1972.

All parties were given the opportunity to present evidence, examine and cross examine witnesses and to argue orally. In addition, briefs were filed in March 1973 and reply briefs in June 1973.

Petitioner Union County Court Clerks Association (Docket No. RO-415) withdrew their petition. However, the International Brotherhood of Teamsters Local 866 (Docket No. RO-438) filed a petition seeking to represent the County Court Clerks.

It should also be noted that the petition filed on February 28, 1972 by Local 286, International Brotherhood of Teamsters (Docket No. RO-423) which sought to represent "all maintenance workers" was not pursued. The attorney of record, Howard Goldberger, Esq., was notified of all hearings but did not appear. No testimony was offered or taken to support the petition of Local 286.

## BACKGROUND

Union County Employees Local 550, Service Employees International Union, AFL-CIO filed two petitions on August 25, 1971.

One petition (Docket No. RO-337) seeks to represent certain employees in the Department of Roads, Bridges and Engineering, more specifically set forth below. The other petition (Docket No. RO-338) seeks to represent building maintenance employees, more specifically set forth below in the Court House and Venere Building.

On the date the petitions were filed, these two groups of employees were represented by Union Council 8, New Jersey Civil Service Association, which was certified on March 15, 1970 (Docket No. RO-33) as the bargaining representative of the white collar employees. On July 6, 1970 Council 8 was certified (Docket No. RO-46) as bargaining representative of the blue collar employees.

Local 550 filed a petition for intervention in these proceedings. Council 8 prevailed in both the white collar and blue collar elections.

Union Council 8 entered into a collective bargaining contract on December 10, 1970 which was effective on January 1, 1970 and expired on December 31, 1971. A new contract was signed on July 13, 1972 effective January 1, 1972 through December 31, 1973.

In January and February five additional petitions were filed. The Licensed Practical Nurses Association (Docket No. RO-395) sought to represent "all licensed practical nurses". The Union County Detention Center Employees (Docket No. RO-405) sought to represent the "children supervisors". The Union County Court Clerks Association (Docket No. RO-415) sought to represent "County Court Clerks". This petition was withdrawn. The International Brotherhood of Teamsters Local 866 sought to represent the County Court Clerks instead of Union County Court Clerks Association (Docket No. RO-438). The International Brotherhood of Teamsters Local 286 (Docket No. RO-423) sought to represent "all maintenance works". This petition was not pursued.

In addition to Union Council 8, N.J. Civil Service Association, there are ten other unions each representing relatively small numbers of employees. Most of these bargaining units were formed as a result of the requirements of the Public Employment Relations Act which requires, for instance, separate units for police groups and supervisors. The Act also permits professionals such as Registered Nurses to have their own unit.

DOCKET NO. RO-337-338

Union County Board of Chosen Freeholders
Public Employer

and

Union County Employees Local 550, S.E.I.U., AFL-CIO
Petitioner

and

Union Council 8, N.J. Civil Service Association
Intervener

Position of the Petitioner

Union County Employees Local 550, S.E.I.U., AFL-CIO, hereinafter referred to as Local 550, filed two petitions, Docket Nos. RO-337 and 338.

The petitioner in RO-337 seeks to represent employees in the Department of Roads, Bridges and Engineering in 24 classifications doing road, bridge and engineering work. These classifications are listed in Exhibit P-1 put into evidence on October 27, 1971 (T 10-27-1971, 13, 18).

The unit sought in RO-338 consists of a unit of building maintenance employees in the Court House and Venere Building consisting of job classifications listed in Exhibit P-2 (T 10-27-1971, 21, 22) and numbering about 103 employees.

It is claimed by the petitioners that Union Council 8, N.J. Civil Service Association, hereinafter referred to as Council 8, from the time it was certified as representative of the overall bargaining unit of the employees of the Union County Board of Chosen Freeholders, hereinafter referred to as the County Board, until the petitions

were filed "neglected to pay any attention to the needs of the employees in the two bargaining units (a) roads, bridges and engineering, and (b) building maintenance unit".

To support its position Local 550 called as its first witness Louis J. D'Amato who works for the County Board as a highway and bridge inspector. He testified (T 10-27-1971, 32, 33, 34) that employees classified on Exhibit P-1 work out of the same location.

"Q Where is it located?

A In the County Garage, the County Road Department, the County Bridge Department, the County Engineering Department, all located on South Ave. in Scotch Plains.

Q Are these departments next to each other?...

A Absolutely, right next to each other.

....

Q At any time between the time there were public announcements that Council 8 had been certified for the employees on P-1, did Council 8, as far as you know, seek to ascertain from any of the people holding those classifications on P-1 what they would like to get in the collective bargaining agreements to be negotiated.

A To my knowledge none at no time did they approach us.

Q I call your attention to P-2. Exhibit P-2 is the list of employees for building maintenance. Are you familiar with the employees most of them who work in these classifications for the county?

A I am, we have represented these employees since 1956.

Q When you say, "we" what kind of a union,

A Local 550, S.E.I.U. Union County Employees.

Q Now, at what locations do the people in these classifications work?

A Most of them have worked, and still do, with the exception of the few, in the Venere Building and the Engineering Dept, the majority work out of the Union County Court House.

....

Q And as far as you know, following the certification of Council 8, on July 2nd, 1970 did they call a meeting of the employees in the classifications listed on P-2 to ascertain what these employees wanted to get from the Board of Freeholders in the contract to be negotiated?

A To my knowledge, no."

Mr. D'Amato also testified that in his opinion Council 8 did not properly represent these workers. He was asked (T 10-27-1971, 36, 37):

"Q Have there been any individual instances where you felt that you were not being properly represented by Council 8 during the period represented by Council 8 during the period since the certification and today?

A Yes, I would say the majority of night workers were never installed by these, by the group that is representing them; they have not allowed them, they have kept their dues... they havn't stopped taking their dues out where they were requested."

The following dialogue in reference to the point took place between Hearing Officer Jeffrey B. Tenner and Mr D'Amato (T 10-27-1971, 118).

"Q So it's your contention that individuals within the units you seek attempted to become members of Council 8 but did not ever get installed as members?

A That is correct.

Q And that was those employees who worked nights?

A Primarily, yes.

Q Primarily?

A Yes."

He also testified that the wage increase, which was $600 for all employees effective Jan 1, 1970, was not equitable. He stated (T 10-27-1971, 37, 38, 39) that because the work they perform is so different, the blue collar workers should command a lot more money than the white

collar workers and also that the white collar workers work less hours (T 10-27-1971, 38). The blue collar worker works 40 hours whereas the white collar worker works 30 hours. The same reasoning applied to the $500 raise granted to all employees effective Jan 1, 1971.

Mr. D'Amato stated that in his opinion length of vacations based on years of service should not be applicable to both blue and white collar workers. He stated (T 10-27-1971, 40) "Our people who we are attempting to represent at this time are outdoors most of the time and don't have air conditioning and are subject to all types of weather. The white collar workers have heat and air conditioning whenever it is required and never have to work at night on snow removal and emergencies".

He also testified (T 10-27-1971, 41) that he had never seen notices posted by Council 8 asking either the building maintenance employees or the road and bridges department employees for suggestions as to what should be included in the new contract. Neither did they call any meetings (T 10-27-1971, 43).

Mr. D'Amato testified that although the contract was not signed until December 10, 1970 he heard nothing about the on going negotiations after he returned from his vacation in the summer of 1970 (T 10-27-1971, 110).

Mr. Nicholas M. Albano Jr., who is classified as acting foreman pending examination, testified regarding approximately 100 employees whose job classifications are listed in Exhibit P-2 (building maintenance employees in the Court House and Venere Building). He gave the following testimony (T 10-27-1971, 130):

"Q Since the certification in July 1970 of Council 8, have they ever held a meeting in the Court House or near the Court House in which they have asked that these people who are in the classifications in P-2 should attend?

A No, never have held a meeting."

To substantiate the argument that Council 8 did not properly handle grievances, Gennaro Marciano testified (T 2-8-1972, 8, 11, 12) that Council 8 had put up a notice on the bulletin board which stated that Pete Fiorito and Danny Seiv were shop stewards but both men denied being shop stewards. Mr. Marciano testified that on one occasion when Mr. Seiv was out sick, Mr. McGhee saw him regarding some money due McGhee. He asked Marciano to see Mr. Turter, the supervisor, on his behalf. The witness stated: "I said no because we were not the bargaining agent. So I brought him over to Mr. Pete Fiorito and I asked Pete if anything could be done for him. Fiorito said, "Look I am not a shop steward for Council 8." He says, "I had nothing to do with that". I said, "Well, they say you are". He said, "How many times have I told you I am not a shop steward for Council 8"."

Mr. Marciano also testified (T 2-8-1972, 13, 14, 15) that on another occasion he again went to see Pete Fiorito with Mr. DeVico regarding meal money, but Mr. Fiorito denied he was a steward for Council 8. He then proceeded to see Bob Potter, Superintendent, together with Mr. Fiorito, Mr. DeVico, Mr. Davis and Mr. Angen. When Mr. Potter said, "Well you've got your representative", Pete Fiorito responded that he was not a shop steward for Council 8.

According to Mr. Marciano, Mr. Fiorito stated (T 2-8-1972, 20, 21),

in front of about 30 workers who were waiting in the yard to punch out one day in January 1971 shortly after a notice was put up, that he had not authorized anyone to place his name on the notice as shop steward.

Mr. Marciano further testified regarding a grievance on the improper assignment of overtime involving Mr. Nufrio which occurred in November 1971 (T 2-8-1972, 22, 23). He stated that he had heard that Mr. DiSano, who he understood was a shop steward for Council 8, refused at first to consider the grievance because Nufrio was not a member of Council 8 but subsequently handled the grievance.

The next witness for the petitioner was Richard McCracken who works as a laborer in the Roads Dept. He stated (T 2-8-1972, 72, 73) that he was suspended by Mr. Turter for three days as a penalty for cussing in a Union County vehicle in which about fifteen to twenty men were being transported.

He was referred to Danny Seiv and Pete Fiorito by Joe Hauser, the driver. He saw them the next day in the presence of Joe Hauser. When he related the circumstances leading to the suspension, "Danny Seiv asked me if I belonged to Council 8. I told them I did not. He said, "I can't do a thing for you"."

Mr. Joseph Nufrio, who works in the Building Maintenance Dept., was the next witness. He testified (T 2-8-1972, 92 to 97) that he was unable to obtain Council 8 to represent him in a grievance involving a foreman taking overtime work which he thought should have been given to a maintenance man. He wrote out the grievance and gave it to DiSano. Until the date of the hearing he did not know what had happened to the written grievance. But at a subsequent meeting

with Mr. D'Lucca, a supervisor, he noticed that Mr. D'Lucca had the written grievance in his hands. At this meeting no one was present to represent Mr. Nufrio.

Mr. Wilbur Davis, who has worked for the County as a Truck Driver in the Road Department, testified (T 2-8-1972, 119 to 123) that in the sixteen years he has been working for the County the men received two dollars meal money, which was then discontinued from September to December. At a meeting with Mr. Potter to discuss the matter, Mr. Davis stated that he heard Mr. Fiorito deny that he was the representative of Council 8.

Mr. Enrico Colicchio, who works as a Sign Painter, testified (T 2-8-1972, 154 to 159) that he was present when a problem, which occurred in December 1971, was discussed involving Mr. McGhee. At this meeting McGhee asked Mr. Marciano to help him get his money. Mr. Marciano said that he could do nothing and suggested that Pete Fiorito, who was present in the garage, be asked to help. "Pete says, "I can't do nothing for you and that was it"."

Mr. Albert Sheather, employed by the Union County for 18 years, is an Assistant Foreman in the Highway Maintenance. He testified that he saw a notice on the bulletin board in the building in Scotch Plains. This notice, dated Jan 13, 1971, was addressed to Mr. Felix Turter, Superintendent, Union County Road Department, 2371 South Avenue, Westfield, New Jersey. It stated:

"Please be advised that President Thomas J. McLaughlin (Union Council 8) has appointed Mr. Daniel Seiv and Mr. Peter Fiorito to the Grievance Committee for the Union County Road Department.

Your cooperation will be appreciated.

Very truly yours,
Olga Sachenski
Recording Secretary"

Mr. Sheather stated (T 3-27-1972, 27):

"A I knew Mr. Seiv was a member of 550, and I was shocked to see that he was a Steward of Council 8. I said, "Danny, what are you doing to us?" He said, "What are you talking about?" I said, "A notice is out there that you are a Steward for Council 8." He said, "I am not a Steward for Council 8." I said, "Well, the notice is out there, and has your name on it." He said, "Well, I gave no authorization for my name to be put on there." I said, "Are you trying to tell me that you are not a Steward of Council 8?" He said, "Not to my knowledge"."

Louis Rocco DeCico, who is employed as Mechanical Repairman - Foreman in the Union County Road Department, testified (T 3-27-1972, 42 to 49) that a problem arose regarding the payment of meal money about December 15, 1971. The men under his supervision - Angen, Fiorito, and Wilbur Davis, asked him to be their spokesman. He also asked Mr. Marciano to accompany them. They all went to see Mr. Potter, the Supervisor. DeCico stated: "We had Mr. Fiorito, but he didn't want to act as shop steward, but just one of the boys in the shop". The dispute was eventually settled by the acceptance of partial payment.

Joseph Paul Hauser, a truck driver for the Union County Road Department, testified regarding the suspension of Richard McCracken for three days because he cussed in the truck that Hauser was driving (T 3-27-1972, 67, 68). He stated that he saw the January 13, 1971 notice which stated that Seiv and Fiorito were appointed to handle grievances. He then contacted Mr. Seiv, explained the situation, and said, "Is there anything that could be done for this man? He replied

he could do nothing that he had already talked to Mr. McLaughlin, President of the Union who said there was nothing they could do for him."

Hauser then approached Mr. Fiorito who said he would try to do something, but not as a representative of Council 8.

Mr. Chester Anthony, who has been a truck driver in the Road Dept. for seventeen years, testified (T 3-27-1972, 102) that he asked Mr. Fiorito to represent Mr. McGhee and he responded, "I am no representative. I can't go up to represent nobody. See, I am no representative.... No matter whether my name is on the board or not...."

Local 550 concludes that the testimony supports its position that:

1. The list of job classifications in Exhibit P-1 (for RO-337) constitutes an appropriate separate bargaining unit of road, bridge and engineering employees;

2. The list of classifications in Exhibit P-2 (for RO-338) constitutes an appropriate separate bargaining unit of building maintenance workers; and

3. Union Council 8 has defaulted on its statutory obligations to be responsible for representing the interests of all such employees in the entire bargaining unit without discrimination and without regard to employee organizational membership, and therefore separate elections should be directed in each of the foregoing two units to ascertain whether the employees in the one or the other, or

both units, shall be severed from the present over-all County bargaining unit, and if the vote is favorable thereto, the one or the other, or both units, should be declared established and the winner in the election should be certified as the sole and exclusive bargaining agent for said unit.

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|---|---|
| DOCKET NO. RO 395 | : |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS | : |
| Public Employer | : |
| and | : |
| LICENSED PRACTICAL NURSES ASSOCIATION | : |
| Petitioner | : |
| and | : |
| UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION | : |
| Intervenor | : |

Position of Petitioner

The Licensed Practical Nurses Association, hereinafter referred to LPNA, filed a petition (Docket No. RO 395) seeking to represent the Licensed Practical Nurses at John E. Runnells Hospital in Union County.

The petitioner asserts that its petition should be granted for three reasons:

1. Practical nursing is a profession and as a professional group the licensed practical nurses are entitled to separate representation.

2. There is a special community of interest unique to the licensed practical nurse. It is unreasonable to lump them with all other blue collar workers in the County.

3. Council 8 has not furnished adequate representation in so far as the licensed practical nurses are concerned.

In support of its argument that practical nursing is a profession and is entitled to separate representation, the petitioner cited Madeira Nursing Home 203 NLRB #42 83 LRRM 1033 (April 30, 1973). Although this is an NLRB case, it is argued that according to the decision of Justice Francis in Lullo v International Association of Fire Fighters, Local 1066 (55 N.J. 409, 262 A2d 681) 1970 P.E.R.C. must take cognizance of relevant opinions of the NLRB.

In the Madeira case the Board stated:

"...due primarily to the nursing shortage which developed in the nation during the 1950's, LPNs have emerged from essentially an auxiliary role in patient care to the status of a nurse, performing duties which twelve or fifteen years ago were performed by an RN.

"...We are persuaded, in view of the educational requirements generally prevailing for the practice of licensed practical nursing and the pattern which exists for broad nursing home units excluding LPNs that we ought not... preclude their exclusion from a unit petition for when, as here, they enjoy a substantial community of interest among themselves which is separate and distinct from the broader interests they share with nursing home employees (such as aides, orderlies and housekeeping personnel)." (Emphasis supplied by petitioner.)

The petitioner points out that footnote 4 of the Opinion specifically overrules four prior cases which had upheld the inclusion of LPNs with aides, orderlies and housekeeping personnel.

It is pointed out that the Burlington County case in which P.E.R.C. lumped LPNs and blue collar workers was decided prior to the Madeira case. Moreover, a "careful reading of the Hearer's decision in the Burlington County case does not substantiate his findings that LPNs are not professionals".

The petitioner points to the testimony given by Edith B. Marshall, Director of Nursing at John E. Runnells Hospital, to support its position. Her testimony showed that other than monitoring a coronary case and administering a fractional dose of medication there was little difference between the duties of a registered nurse and licensed practical nurses who rendered nursing services. Whereas previously practical nurses were not permitted to catheterize they are now permitted to do so. Tube feeding was formerly not permitted by LPNs but now is permitted.

Mrs. Marshall "conceded that except for one registered nurse who is in charge five days a week from 7:00 AM to 3:00 PM, all of the "charge nurses" at Rose Hall, one of the hospital buildings, are licensed practical nurses assuming responsibilities for full floors". This confirms the testimony given by Mr. Dominic Biondi, President of the Licensed Practical Nurses Association of New Jersey, who testified (T 3-28-72, 20):

> "During the day shift and afternoon shift, there are R.Ns. and L.P.Ns. on the floors. The R.Ns. are in direct charge of the floor. On the 11 to 7 shift, nine times out of ten, there are no R.Ns. directly on the floor. The L.P.N. is in complete charge of that floor and takes the orders from the doctor and directly administers all care and treatment to the patients."

Mrs Marshall confirmed the fact that licensed practical nurses do not receive wage differentials for assuming responsibilities of head nurse or shift differentials any where in proportion to those paid registered nurses. (Petitioner brief p 4, 5).

LPNs must be distinguished from Institutional Attendants who take temperatures, pulse, respiration, give baths, make beds,

but do not administer medication, make entries on charts or take charge of a floor.

To support its position that there is a community of interest peculiar to the Licensed Practical Nurses not applicable to other County employees, the petitioner cites the Madeira Nursing Home case which held that the interest of LPNs were distinct from other nursing home employees such as aides, orderlies and housekeeping personnel. If this is so then, "Surely their community of interest is separate and distinct from laborers, parking attendants and the many other classifications within the "blue-collar" unit". (Petitioners brief p 12).

The third reason advanced by the petitioner is that Council 8 has not adequately represented the LPNs.

To support the argument that the LPNs are not properly represented, Mrs. Dorothy Weatley, an LPN at John E. Runnells for ten years, testified as follows (T 3-28-72, 31 - 50).

> "Q Do you feel that, you as a licensed practical nurse, have been adequately represented by Council 8 since that election? A I would say definitely not.
>
> Q What special problems do you and the other practical nurses at Runnells Hospital have which are not adequately represented by Council 8? A Well, our biggest problem, we as 29 women as opposed to 1,000 people in a group of Council 8 or more members, and we have not really a chance when they have a meeting or anything to get the interest of a few people over, because all they're interested is basically for the majority, and our interests, of course, are more in the nursing line, and it goes along with the R.N. contract. For example, in the State of New Jersey, they suggested in the P.N. association --

THE ARBITRATOR: What association?

THE WITNESS: Practical Nurses Association, sir. Our salaries, for example, 85 percent of the R.Ns., they get pay, for example, per day, $4.00 a day where we get nothing, but we do have the same job.

Q Let me stop you. A Evening differentials.

Q Is this one of the areas of grievance that the practical nurses are sometimes or practically, frequently in charge of a floor or a wing or a section of the hospital? A Well, yes. At the present time the P.Ns. completely run one unit, Rose Hall. They are used, of course, sometimes on days and they have no R.Ns., but most of the time, these girls work days, so they have coverage on that floor, but evenings and nights, the girls definitely are in charge most of the time.

Q Do you work a steady shift? A Yes, I do. I work 3 to 11.

Q On that shift, are you ever in charge of your section of the hospital? A Oh, yes. All the time.

Q Now, when an R.N. is in charge of that section, is she paid a wage differential? A She is given a wage differential of $4.00 more per night for being in charge or for doing the very same job I do....

Q Have you ever attempted to have Council 8 take up with the hospital authorities this question of the differential for being in charge? A Well, this was our basic reason, yes, because this was our basic reason for trying to get out since this last contract. The basic reason is, of course, they take a blanket need for the entire county as opposed to a few of us. We just wouldn't have a chance.

THE ARBITRATOR: Did you as a group make any representation to the officials of the --

THE WITNESS: You mean in writing, sir?

THE ARBITRATOR: Yes.

THE WITNESS: No.

Q Did you do it orally? A Yes.

THE ARBITRATOR: To whom and how?

Q That's what I want to know, to whom did you speak orally? A Well, for example, I talked to Mr. Farley and Mr. Bragg who are both officials of the county and fellow employees.

Q Mr. Farley, do you know his full name?
A James Farley.

Q Mr. Farley, he is an officer of Council 8?
A Yes.

Q Who is the second gentleman you mentioned?
A Mr. Bragg, but I think he is an officer, but I really -- I honestly can't tell you the title.

THE ARBITRATOR: You don't know what the specific office he has is?

THE WITNESS: I don't, no. I am on the 3 to 11, and we have no representatives on the 3 to 11 to go to at all.

Q I would like to ask you the question, so it may appear as such in the record.

Is there anyone, to your knowledge, assigned by Council 8 to the 3 to 11 shift when you were constantly working? A No.

Q With whom you can discuss any grievances?
A No, sir.

Q Has there ever been anybody? A If there is somebody there, I never heard it, and I never seen it posted."

Mrs. Mayme Brookins testified that she is an LPN at Runnells and works on the 11:00 PM to 7:00 AM shift. She testified (T 6-21-72, 42):

Q There is no R.N. charge nurse or staff nurse who is in charge of your work? A Not if I am in charge.

Q And when you say not if you are in charge, you are normally in charge whenever you work? A I am normally in charge when I am on duty the five days.

Q Now, are you a Senior Practical Nurse?
A No, I am not.

Q Do you receive any extra pay for being in charge?
A No, I do not.

Q Now, do you receive a wage differential for working the 11:00 P.M. to 7:00 A.M. shift? A Yes, I do.

Q Would you tell us what that wage differential is?
A $6.75 per week.

Q Are you familiar with the salary schedule of R.N.s? A Somewhat, yes.

Q Do you know what wage differential they receive for working the 11 to 7 shift? A I think it is $24.00 per week."

It is also claimed that Council 8 failed to obtain for LPNs a tuition allowance for further education and training and no released time for in-service training.

A large shift differential was previously obtained for registered nurses but a small one of $1.00 per week or $.20 per day for LPNs. Today the LPNs receive a $6.75 per week shift differential as opposed to the $24.00 paid to the registered nurse. Moreover, there is no evidence that LPNs will receive additional payment for serving as head nurse.

The petitioner points out that it is significant that several groups are seeking to have separate units. This is a clear indication that many employees are dissatisfied with the manner in which they are represented by Council 8.

It is argued that the special problems of a group of 30 practical nurses cannot be the major concern of an overall union representing over 800 County employees. Unless the LPNs

are permitted to represent themselves this condition will continue.

Council 8 produced a few witnesses whose grievances were satisfactorily settled but this is insufficient to prove adequate representation. The evidence disclosed that many LPNs were not aware of the grievance procedure and even though they may have known that Mr. Bragg and Mr. Farley were representatives of the Union this does not establish that members were given adequate advice.

The petitioner concludes that its petition should be granted.

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|---|---|
| Docket No. RO 405 | : |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS | : |
| Public Employer | : |
| and | : |
| UNION COUNTY DETENTION CENTER EMPLOYEES | : |
| Petitioner | : |
| and | : |
| UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION | : |
| Intervenor | : |

Position of the Petitioner

The Union County Detention Center Employees, hereinafter referred to as Detention Center Employees, filed a petition (Docket No. RO 405) seeking to represent the following employees: Boys Supervisor, Girls Supervisor, Boys Senior Supervisor and Girls Senior Supervisor. Excluded are the Cook, Director, Psychologist, Teacher and Secretary.

The employees are located at the George W. Herlick Juvenile Quarters located at the Union County Court House, Elizabeth, N.J.

The petitioner contends that the job titles included in its petition have no community of interest with either blue or white collar employees.

Their duties involve the supervision of boys and girls

who become residents of the Center because of complaints which are criminal in nature such as breaking and entry, murder, car thefts and drug addiction.

The population consists usually of about 30 boys and 12 girls whose average stay is about 30 days.

The Center is manned 24 hours a day, 7 days a week. The residents are assigned two to a room and are locked inside from the hours of 9:00 PM to 7:30 AM. At all other hours, except from 3:00 PM to 4:00 PM, residents are in the Center proper and supervisors are responsible for overseeing their activities and maintaining order (T 6-19-72, 3 - 4, T 6-20-72, 6 - 7, 130 - 1).

Employees eat their lunch with residents and are on duty at the time. They work 40 hours per week but are required to be on call 24 hours a day. During the hours that residents are not locked in their rooms, supervisors are exposed to attack. Over the past two years there have been twelve or more such attacks. Employees carry no arms as a matter of Center policy.

Moreover, no interchangeability of jobs exists between titles sought by petitioners and any other job titles in the present unit. This was established by the testimony of the County's Personnel Director, Mr. Carlin.

> "MR. WEISINGER: "Would Detention Center titles, (under discussion) -- "be able to practically assert bumping rights anywhere in the County?"
>
> THE WITNESS, MR. CARLIN: "Possibly in the Children's Shelter."
>
> Q. "How about bumping in, does the same thing apply to the "---Children's Shelter---" employees, could they possibly bump into the Detention Center."

A. "I have my doubts on that one, sir."

Q. "Is there any other title, or classification that might be able to bump into the --- or transfer in on a bumping situation, into the Detention Center?"

A. "I can think of none sir." (11/10, P. 118-19.)

Under cross examination by Union Council 8, the Personnel Director testified that the title which might be able to bump into the Detention Center was one which constitutes a separate bargaining unit.

MR. FOX: "Do the Correction Officers have bumping rights into the Detention Center?"

THE WITNESS, MR. CARLIN: "I can't envision it sir."

Q. "Assume --- there was a layoff of jail guards (Correction Officers). Where do you think a jail guard (Correction Officer) would have a demotional right, if any?"

A. "If any, it would seem to me to have to be in that area, the Detention Center. That's the only area that has certain similarities." (11/10, P. 171-2, emphasis supplied.)

The petitioner claims that Council 8 has not adequately represented the employees in the unit sought. To support this claim it is alleged that the benefits obtained by Council 8 during two negotiations were minimal. In fact, Council 8 surrendered longevity for all employees hired by the County after January 1, 1973 and received no obvious concessions in return.

It is also alleged that Mr. Gomulka submitted to Council 8 on behalf of the employees of the Detention Center eleven proposals including wages, fringe benefits and a request for parity with Correction Officers. These proposals were not obtained by Council 8. Moreover, they were not even seriously considered according to the following testimony (T 11-8-72, 101-2).

MR. WEISINGER: "Did real collective bargaining "--the Detention Center proposals-- "take place."

THE WITNESS, MR. CARLIN: "I do know it was discussed across the table, but I don't believe Mr. Powell or I ever got the impression there was anything heated concerned with that area the (Detention Center)"

No consideration was given during negotiations to the fact the petitioners' titles are required to work twelve or sixteen hours of continuous duty for which they are paid straight time. Mr. Gomulka attended 3 or 4 negotiation meetings but was not invited to all the meetings.

The Petitioner claims that the grievance procedure negotiated by Council 8 is totally inadequate. Under the 1970-71 agreement the final decision was made at the second step by the department head. This was modified by the 1972 agreement by adding a third step which reads as follows:

"Step 3. The final decision of the department head shall be submitted to the Personnel Director, together with a copy of the grievance and all supporting papers, within five (5) days of the decision for his review. (Exhibit F-3, ARTICLE VIII, Section 1)."

It is pointed out by the Petitioner that the new step merely provides for a review by the Personnel Director. There is no appeal to an impartial third party who can render a final and binding decision which is almost universally accepted as the terminal step in grievance procedures.

In addition, grievances presented by Detention Center employees were not properly processed. On two occasions grievances concerning the proper payment of holiday pay were ignored. The

Petitioner offered in evidence the following letters to support this contention (Exhibits D2 and D3).

"UNION COUNTY DETENTION EMPLOYEES

U.C. COUNCIL #8
ATT:Mr. T.SIENECKI August 22, 1970

Dear Mr. Sienecki:

We, the above Employees of the Detention Center, have a GRIEVANCE, pertaining to a National Holiday. The Employees that did work on JULY 4, 1970, did receive 8 hours extra pay, the Employees that were not scheduled to work, and those who were Off, DID NOT, receive any Monies or Compensatory Time, by our Director. Under the Constitution of Council #8, members are to receive so many said Holidays, with Pay. All Employees of the Court House do receive pay for Holidays, when they are off, so, therefore are We excluded from the same Benefits as all County Employees?

As, Members in Good Standing, and paying our Dues to Council #8, We, feel that the above matter, be justified, and the GRIEVANCE COMMITTEE gives the above consideration. We, will be subjected to another Holiday on September 7, 1970, Labor Day, and We, will have the same problem as the above.

Thank You, for Your consideration in the above matter.

EDWIN J. GOMULKA
U.C. DETENTION EMPLOYEES"

"GRIEVANCE COMMITTEE
COUNCIL #8 U.C. EMPLOYEES
ATTN: MR. TED SIENICKI December 24, 1970

Dear Mr. Sienicki:

We, the following employees of the Detention Center, wish to file a Grievance, for not receiving a Compensatory Day, for May 29 th., 1970. Both May 29 th. and May 30 th. were declared a Holiday by Governor Cahill. The Employees that worked the 29th. of May received 16 hours pay, the employees who were off due to Scheduling were not compensated in any way. The County workers were of the 29 th. of May, and received a Days pay for this, our employees listed below did not receive anything.

These are the Employees who are filing this grievance: Robert Shaver, Joseph Shoemaker, Patrick Englese, Kervin Isaac, William Mc Grady, Paul Lugara, Mabel Sutherlin, Joyce Hayman, and Laurline Sampson.

Thank You for your consideration in the above matter.

Sincerely Yours,

_____

Edwin J. Gomulka, Delegate

To further demonstrate the inadequacy of the grievance procedure, the Petitioner submitted in evidence the following letter (Exhibit D-4).

22 Putnam Avenue
Berkeley Heights, N.J. 07922
February 14, 1971

Mr. Edwin Gomulka
Union County Detention Center

Dear Ed:

I spoke with Tom McLaughlin on Thursday evening while we were in Scotch Plains to bargain for the Scotch Plains Employees.

I read your letter to him and also Ed Lipisco. Tom was of the opinion that some one on one of the three shifts should have detected the smell of smoke. He said that if this happened in the Prison the same action would be taken. I tried to tell him that two or three of us including Danny Bragg should try to make an appointment with Dixon, but he said that according to Civil Service Commission ruling we can do nothing about a suspension under five days.

Believe me I feel bad that I can not do something on my own to get to talk with Mr. Dixon, but my hands are tied.

Sincerely

Jim Farley

The Petitioner alleges that employees were never advised officially as to who their grievance representatives were or how to process grievances (T 6-19-72, 90-3).

Communications between Council 8 and the employees they represent has been very poor. No effort was made by Union Council 8 to communicate with the bargaining unit between negotiations and notification of meetings called to discuss negotiations were haphazard at best. Moreover, no proper notice was given of the meeting called to ratify the 1972 contract and only 50 persons appeared and no minutes were kept.

Members of the bargaining unit have no voice in the selection of their negotiating committee or stewards. Those appointed by Council 8 to represent employees at the Court House Complex in Elizabeth and at Runnells Hospital must serve 200 and 400 employees respectively. The steward for the Detention Center does not understand the problems of the people he represents.

To further show that employees of the unit sought by the Petitioner are not properly represented, the following testimony (T 6-19-72, 8) is cited by the Petitioner. It is in response to a question regarding a telephone conversation between Mr. McLaughlin and Mr. Shaver, a Boy Supervisor at the Detention Center. Mr. Gomulka suggested that Shaver call McLaughlin to inquire about the status of a grievance that Mr. Shaver filed with regard to a suspension he received.

"MR. WEISINGER: "Can you recall the conversation?"

THE WITNESS, MR. SHAVER: "Yes I called up Mr. McLaughlin and I stated who I was and he said: "What the hell are you calling me for, we are not even representing you. When I tried to elaborate more on the subject, he hung up."

Mr. Gomulka's testimony (T 6-20-72, 43) confirmed Mr. Shaver's.

THE WITNESS, MR. GOMULKA: "I spoke to him (McLaughlin) right after Mr. Shaver's conversation and I stated that the reason I had him call is to find out what is going on with his suspension grievance."

MR. WEISINGER: "And do you recall the conversation?"

THE WITNESS, MR. GOMULKA: "Yes. He told me: "I do not know what the hell you guys are calling me up for, we are not representing you any more. And he hung up on me."

The Petitioner also alleges that the employees in the unit sought are in fact law enforcement officers and as a matter of legislative intent should not be included in an employee organization which admits employees other than law enforcement employees to membership.

The New Jersey Statute 34:13A5.3 prohibits policemen from joining an organization which admits to membership persons other than policemen. The New Jersey Superior Court has ruled that law enforcement officers are considered policemen. Since the Petitioners titles perform law enforcement work they should be classified as law enforcement officers and permitted to have a separate bargaining unit. The Detention Center is receiving Federal funds to strengthen local and State law enforcement procedures, facilities and techniques.

In its reply brief the Petitioner advances several additional arguments. It claims that employees represented by the Petitioner were not parties to the consent election. Moreover, the fact that all Detention Center employees resigned from Union Council 8 prior to June 1971 is a clear indication of deep seated employee dissatisfaction.

In Article VI, Section 3 of the current contract an employee may be assigned to fill positions not in their payroll classification for emergency periods not to exceed 15 days. This clause deprives employees of pay they would have been entitled to under the old contract.

The evidence shows that petitioners' titles fit neither the definitions of "blue collar" or "white collar" and they are interchangeable only with Correction Officers, a law enforcement classification which has a separate unit.

The petitioner concludes that on the basis of the record the Hearing Officer and P.E.R.C. should find as follows:

> "A. Boys Supervisors, Girls Supervisors, Boys Senior Supervisors and Girls Senior Supervisors constitute a separate and appropriate bargaining unit because of lack of community of interest with other employees in the bargaining unit of white collar or blue and white collar employees represented by Union Council 8, New Jersey C.S.A.
>
> B. Union Council 8, New Jersey C.S.A., has failed to carry out its statutory responsibilities to represent the above employees.
>
> C. The above employees are, in fact, police officers and that the intent of N.J.S. 34:13A5.3 prohibits these employees as law enforcement officers to be in the same unit with employees who are not law enforcement officers.

D. The Union County Detention Center Employees Association is the majority representative for all employees employed by the Union County Detention Center with the specific exclusions listed in I. of this brief; or failing that, direct an election in the above unit between the above Association and the present employee representative."

| | |
|---|---|
| Docket No. RO-438 | : |
| UNION COUNTY BOARD OF CHOSEN FREEHOLDERS | : |
| Public Employer | : |
| and | : |
| INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 866 | : |
| Petitioner | : |
| and | : |
| UNION COUNCIL 8, N.J. CIVIL SERVICE ASSOCIATION | : |
| Intervenor | : |

Position of Petitioner

International Brotherhood of Teamsters, Local 866, hereinafter referred to as Local 866, seeks to represent the title Court Clerk of Union County which now numbers 14 persons. Local 866 does not seek to represent Court Attendants, Sergeants, Court Reporter and Secretary, who, in addition to the Court Clerk, constitute the Judge's staff nor Deputy District Court Clerks of the County District Court. The Court Attendants and Sergeants of the Court are considered peace officers and are represented by P.B.A local.

The Union County Clerk appoints and assigns Court Clerks to individual Judges in the Superior and County Courts. Once a Court Clerk is assigned to a Judge, all his work assignments are made by the Judge to whom he has been assigned.

The duties of a Court Clerk, according to the testimony of Mr. John J. Cantrell, who has served for 8 years as a Court Clerk, are as follows (T 6-21-72, 11).

> "A Court Clerk comes in early before court opens, sits down with the Judge and goes over the case, brings the docket up to the Judge, sits down with him, goes over the case, makes sure that the case runs smoothly over the entire day, he is the liaison between the attorneys and the Judge, he swears in witnesses, keeps all evidence."

Mr. Cantrell also stated (T 6-21-72, 9-10) that there is no interchange between the Court Clerk and any other title in any other department. Moreover, there is no line of promotion from Court Clerk to any other classification.

He explained that, although the regular hours for Court Clerk is from 9AM to 4 PM, he frequently works longer hours and receives no additional compensation (T 6-21-72, 5-7). He normally starts at 8:30 to service the Judge who goes on the bench at 9:00 AM. Moreover, he usually stays for one half to one hour once a week and several times a year he is required to return after he has gone home. If a mass arrest is made in a narcotics or gambling case the Judge and his staff convene court at night.

He also stated that he is on call 24 hours a day.

Mr. Cantrell, who was the only witness for the Petitioner, testified that Council 8 was not properly representing Court Clerks. He stated that Mr. Paul, who represented the Court Clerks, did attend one negotiation session but only as an observer.

The Petitioner concludes that the Court Clerks are entitled to a separate unit.

POSITION OF UNION COUNCIL 8

Union Council 8, N.J. Civil Service Association, hereinafter referred to as Council 8, takes the position that all petitions should be dismissed for the following reasons.

1. In a previously hotly contested election, which Local 550 lost, it was agreed by Local 550 that a unit consisting of all blue collar employees was appropriate and that the blue and white collar employees should be combined into one unit if employees voted for Council 8 representation.

2. If the petitions of the Detention Center employees, court clerks and licensed practical nurses were granted, the result would be a fragmentation of the County into a number of small units contrary to P.E.R.C. rules. Moreover, these three groups failed to intervene in the initial election proceedings and have been parties to two successive contracts.

3. The testimony given by the witnesses for each of the petitioners does not support the allegations that employees were not properly represented during negotiations or that grievances were improperly handled.

In Vaca v Sipes, 386 US 171, 17 L.Ed Md 842,855 (1967), the leading case on the question of fair representation, it was held, "A breach of the ... duty of fair representation occurs only when a Union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith". (Brief Council 8 p 13, 14)

There was no evidence of conduct on the part of Council 8 that could be characterized as arbitrary, discriminatory or in bad faith.

4. The testimony of witnesses and documentary evidence offered by Council 8 establishes that employees were properly represented during

negotiations and that, in addition, their grievances were properly handled.

To support its position that employees were properly represented and that grievances were properly handled, Council 8 called several witnesses. Peter McGrath, employed in the Union County Bridge Department, stated (T 12-18-72, 9 to 23) that he was asked by Al Klug of Union Council 8 to act as Shop Steward after the election. He accepted the post and all the men in the department knew it. He testified that only three months previously he handled a grievance for Al Irwin, a bridge repairman and equipment operator who was suspended for one day for allegedly refusing to do a job claiming illness. Al Irwin requested him to write up a grievance, which he did. The suspension was rescinded after a discussion with supervisors Lembo and La Rocco.

Mr. McGrath testified that George Momcheck, who is chief operator for the Front Street bridge, was dismissed from his job because he left his post. In a hearing before the County Attorney he was represented by Mr. McLaughlin, President of Council 8, and given a fifteen day suspension which Mr. Momcheck felt was fair.

On another occasion Mr. McGrath and others sought an upward adjustment in wages paid to equipment operators in the Bridge Department to the same level as wages paid to equipment operators in the Roads and other departments. This request was put into writing and has been pursued by Council 8 in negotiations. A letter (Exhibit C-6) signed by the Secretary of Council 8 was addressed to one of the Freeholders asking that this request be considered.

Mr. McGrath related that he brought to Mr. Lembo's attention that while some men were working under a bridge a wall collapsed and a

man narrowly missed death. He told Mr. Lembo that if these conditions were not corrected the union would take action. He was told by Mr. Lembo to bring to his attention any unfit conditions and assured that all safety rules would be applied from that time on.

Mr. McGrath also stated that the bridge attendants knew that he was their representative and that he kept them informed regarding negotiations. He also stated that Mr. Klug, a professional engineer in the engineering department, posted Council 8 notices on the bulletin board.

Mr. John Disano, a senior parking lot attendant in Elizabeth who has been employed by the County for about fifteen years, testified (T 12-18-72, 38-157) that he acts as representative of Council 8 in the Court House complex. He stated that when he was first employed he acted as representative of Local 550 but for the past ten or twelve years he has acted as representative for Council 8. According to Mr. Disano the officers of Local 550, whom he knew personally, had knowledge of the fact that he was a representative of Council 8 and knew where to get in touch with him. There was, however, hostility between Local 550 and Council 8. Local 550 thought that it could do a better job and they did not usually come to Mr. Disano with their grievances.

Mr. Disano testified that he attended most of the negotiating sessions for the 1970-71 contract and that he was responsible for posting notices and keeping the men informed on what was going on during negotiations. He stated that he posted notices "in front of the window of the cafeteria, the doors leading to the cafeteria, and I put them next to the elevators where the people take the elevators. That is in the old building... in the new building I put them next to the elevator and I put them next to

the door where they go upstairs to the detention room and then I put it on the door of the elevator of the new building ... I put them in the elevators too" (T 12-18-72, 52, 53). He also stated that during contract negotiations for the 1971-72 contract he regularly posted notices informing employees of the progress of the negotiations.

He also testified that initial demands made by Council 8 were for a $1,200 across the board increase with a cost of living clause, more fringe benefits such as increased vacations and more sick leave, a night shift differential and a reduction in the longevity provision from eight years to five years, a minimum wage of $5,600, a reduction in the number of years for wage increments. The initial offer by the County was $125.00.

Mr. Disano stated that there were about twenty negotiating sessions and that he saw Mr. Frank Paul of the Court Clerks present at one negotiation and that Mr. Gomulka of the Detention Center participated in the negotiations and discussed the negotiations with Mr. Disano outside the conference room.

Mr. Disano testified that he was also present during the negotiations which led to the 1972-73 contract. Council 8 demanded about $1,000 across the board increase plus other demands which were not won previously such as a night shift differential, parity for the Detention Center employees, reduction in the longevity provision, etc.

The County, through its negotiator Mr. Liotta, offered a wage increase of $125.00 and wanted to do away with longevity, which was rejected.

Council 8 offered in evidence a poster (Exhibit C-7) prepared by Mr. Farley, Vice President of Council 8, which is a notification of a

meeting at which the 1972 salary proposals would be discussed. Mr. Disano testified that he posted this and other notices, at the places previously indicated, advising members of the progress of the negotiations.

Mr. Disano identified a letter addressed to Mr. Sinecki who substituted for Mr. McLaughlin, President, Council 8 during negotiations when he was ill. The letter, from certain maintenance employees in the Court House, expressed appreciation and satisfaction with the negotiations.

Mr. Disano stated that the men on the night shift knew he was shop steward and knew where to find him. He related that on one occasion the night shift men asked him to try to get Council 8 meetings held at the County Court House instead of at the VFW Hall in Roselle which they claimed would be more convenient for them. Mr. Disano testified that he brought up this matter at the next meeting but it was voted down.

According to Mr. Disano, Mr. Albano asked him to arrange for some men to be sworn in as members of Council 8. He arranged for Mr. McLaughlin, President of Council 8, and himself to meet the men at 7:30 p.m. just before the Freeholders meeting, but earlier in the day Mr. Albano called him to say that none of the men would be there for the swearing in. Nevertheless he and Mr. McLaughlin were at the place and time designated but no one appeared to be sworn in.

Mr. Disano identified a document (Exhibit C-9) which is a notice inviting everyone to attend a Council 8 meeting which took place on July 20, 1970. The notice read as follows:

> "All white collar and blue collar employees of the County of Union New Jersey are invited to attend a special meeting to be held at 8:00 P. M., Monday, July 20, 1970, in the V. F. W. Hall, First

Avenue, Roselle, New Jersey. Matters concerning your benefits are to be discussed, so make every effort to attend. You do not have to be a member of Union Council No. 8 to participate."

The minutes of this meeting, made by Mrs. Sachenski, Recording Secretary of Council 8, were offered in evidence (Exhibit C-10).

The purpose of this meeting, according to Mr. Disano, was to tell employees that the County and Council 8 had reached an impasse and the Council wanted to know whether the employees "wanted to go out on sick leave or whether they wanted to demonstrate .... the negotiations were very very tense at that time" (T 12-18-72, 81).

The following are the official minutes of this meeting.

"July 20, 1970

President McLaughlin called a special meeting at the V.F.W. in Roselle on July 20, 1970. All White Collar and Blue Collar workers were invited.

All officers and trustees in attendance with the exception of Pat McGann, Justina Hunt, Pat Davis, and William Muth, who were excused. Stanley Romanowski:Absent.

Pres. McLaughlin announced that the purpose of calling the meeting was in regards to the meeting with Mr. Powell, representative to the Board of Freeholders, and stated "We are not satisfied with the offers they have offered for the White Collar and Blue Collar Worker, and emphasized that Mr. Powell said "This is it" Mr. McLaughlin said this would all be reported later on this evening and requested to know what the membership wanted to do about it. The people here tonight would be granted time to speak, ask questions, or whatever.

Communications:

Letter received from State Use Employees - Rahway State Prison, thanking Pres. McLaughlin and the officers of Council 8 for all their hard work in regards to an increase of 3 ranges they have received. Once again Council 8 efforts have made this possible. Communication received from a Mr. Francis Andres - Rahway State Prison - thanking Pres. McLaughlin and Mr. Lipisko for a job well done in having his job evaluated to Storekeeper Grade 2, which amounted to a 6 range increase - $2178. Mr. Andres commends the Council and wishes them continued success.

An open letter to the entire membership from Mr. Bracken, Storekeeper Grade I - Rahway State Prison, who had a title change to Storekeeper Grade I. He wishes to thank Mr. McLaughlin, with the assistance of Ed Lipisko, Grievance Chairman, in having his position audited, evaluated and adjudicated. He trusts that his letter will serve as an incentive for Council 8's continued success and devotion.

Pres. McLaughlin commented on the communications, and mentioned to the people present that the State came across with substantiated increases and cannot understand why the County would not cooperate.

Proposition for Membership:

There were 13 applications for 1st reading.

Moved by Mr. Farley that these applications be accepted for 1st and 2nd reading this evening.

Second by Lipisko - Motion Carried.

Second reading of the 13 applications took place.

Moved by Mr. Farley they be accepted into membership.

Second by Al Klug - Motion Carried.

Members that were present took the oath, and Pres. McLaughlin welcomed them into the Council and requested they attend as many meetings as possible and join as many committees as possible.

Minutes of the Board of Trustees meeting were read.

Moved by Al Klug minutes be accepted as read.

Second by Jim Farley - Motion carried.

Mr. Sienecki gave a report on the negotiations for the County, and outlined the courses of action.

Mediation-Sick-Out, Lawsuit or Further negotiations.

Mr. Sienecki reported on the employees at Runnells Hospital and on the Licensed and Practical Nurses, and told everyone how dissatisfied they were with the negotiations and wanted to call a sick-out. He announced that the negotiations remain at an impasse, and advised them that we will not stand for it unless the people here tonight make another decision. Mr. Sienecki stated and quoted Mr. Powell and Mr. Carlin who said "It was very unfair to give everyone the same type of increase".

They stated that increases should be given according to job title. Mr. Sienecki outlined all that transpired on all the sessions with the Freeholders. Powell was also asked how he derived at certain figures he was submitting on different job titles. Powell could not give an answer and distinctly told Mr. McLaughlin it was none of his business. Mr. Sienecki stated that Mr. Carlin and Mr. Powell were very rude and crude.

Mr. Sienecki advised the people present that there were monies in the budget and the people should be given a substantial increase. This is all public information wherein the budget is a public record. Mr. Sienecki reminded the members that a protest list (white and blue collar) was submitted to the Board of Freeholders months ago. Mediation - we would have to appeal to PERC - Arbitration is time consuming. A Sick-Call (must be from 90% to 100% successful). We must take the Bull by the Horns and Stay Out.

A loud voice was heard in the audience "WHEN DO YOU WANT US TO GO OUT" Everyone responded with applause.

Mr. Ed. Herlick moved that the negotiating committee go in and take another crack with the Freeholders to bargain, and if we don't get any further, all County Employees go on "SICK CALL"

Second By Danny Bragg  Opposed 23 - Motion Carried.

The people have been advised that another meeting will be called and a report will be given on the progress of the meeting.

It was moved by Mr. Farley that all here this evening attend the Freeholders meeting on Thursday, July 23rd. Second by Al Klug Motion carried.

Mrs. Sally Jowfe suggested we should not stop at this, we should have a newspaper campaign dramatizing our situation.

Pres. McLaughlin informed the people present that the Council was asking $1200 across the board, and this way no one would be slighted. Powell informed the committee that they couldn't give a raise like that and stated "The little people would be getting more than the big people."

Proposals submitted by the County for White Collar were read by Mr. Sienecki and Blue Collar by Mr. Farley.

Pres. McLaughlin stressed at this point we must all cooperate and stay together. They want to keep us divided. "Let's stick together".

A motion to adjourn at 10 p.m. by Al Klug.

Second by Florence Boyle  Motion carried."

Mr. Disano identified a notice of a meeting to be held on July 30, 1970 (Exhibit C-11) and the minutes of the meeting (Exhibit C-12). He stated that he attended the July 30, 1970 meeting at which time the proposed 1970-71 contract was voted upon by the membership. They approved the proposed contract with five or six persons dissenting. The following is the notice of the July 30, 1970 meeting.

"Meeting July 30, 1970-8:00 P. M.

There will be a meeting of the County employees represented by Union Council No. 8, N. J. C. S. A. at the Union County Court House, Tower Building, 4th Floor, Elizabeth, New Jersey at 8:00 P. M. on July 30, 1970.

Please make every effort to attend, since a crucial vote will be taken on the salary proposals submitted to your negotiating team by the Board of Chosen Freeholders negotiator.

A meeting of members of Council No. 8 will be held at 7:00 P. M. in the jury room on the 4th floor."

The following extracts are taken from the minutes of the July 30, 1970 meeting.

"A Special meeting was called on July 30th, 1970 at the Court House in the City of Elizabeth.

First Vice President, James Farley, called the meeting to order. All in attendance with the exception of Pres. McLaughlin who was out ill, Pat McGann, Pat Davis, Justina Hunt William Muth, Excused. Absent: Alfred Klug, Pat Gargano

Mr. Farley stated to the people attending the meeting this evening that the purpose of the meeting was to take a vote either to accept or reject the proposals for the County Employees.

It was moved by John Disano that the reading of the minutes of the previous meeting be dispensed with."

"Danny Bragg spoke on the nurses night differential at Runnell's Hospital, and recommends that we refuse the proposals this evening until such time that the Freeholders grant the night differential.

The proposals submitted by the Council were read by Mr. Sienecki. A vote was taken and approved by the majority that the 2 yr. contract be accepted. i.e. $600 for the 1st year and $500 for the second year.

Mr. Sienecki explained to the people present that all retroactive monies will be given by August 20th, providing it is approved by the Freeholders on the 13th of August.

Mr. Sienecki wanted to take this opportunity to thank the Board of Freeholders, Mr. Powell and Mr. Carlin, and everyone else involved in any way in the negotiations for the County. Moved by John Doenzelmann to adjourn, Second by Ed Lipisko, Motion carried."

Mr. Disano identified a notice of a meeting to be held on January 13, 1972 (Exhibit C-7) and minutes of that meeting. He testified that these reflected what took place. During this meeting the problems of the Court Clerks and Licensed Practical Nurses were discussed. The notice read as follows.

"There will be a meeting of all Union County employees Thursday Jan. 13th (1972) 8:00 PM V.F.W. Hall 1st Ave. Roselle

Meeting Sponsored by Union Council #8 Civil Service Association to discuss 1972 salary proposals!!"

The following is a copy of the minutes of the Special Meeting held on January 13, 1972.

"A Special Meeting was held January 13, 1972, at the V F W in Roselle for Union County Employees, Re: Salary Negotiations for 1972. Pres. McLaughlin called the meeting to order at 8:00 p.m., and advised the ones present that the purpose of the meeting is to get suggestions and requests from the Employees in Union County.

Mr. McLaughlin stated that a meeting was already held with Mr. Powell and they had a tentative request that they follow procedure $600 and $500 with some exceptions.

Pres. McLaughlin said the Court Clerks took quite a drop, they went down, and he said they will certainly try to negotiate to bring these Court Clerks to a reasonable compensation. We want to try and reimburse Court Clerks somehow. Practical Nurses and Night Differential was also discussed.

It is our understanding stated Pres. McLaughlin that the Practical Nurses do not want us to represent them.

An agreement signed by Pres. McLaughlin and Director Edward Tiller extending contract to February 15, 1972.

Much discussion was held in regards to monies for the negotiations. Many felt they should ask for $600 and $700. and not $600 and $500. Miss Town from Runnell's said to ask for $700 and $800.

Mr. Tom Kennedy Court Clerk explained the status on Court Clerk's, relative to a question raised by Miss Corelia Vogel.

It was also mentioned that the Guide Line next year could go either way. It was already broken by the steel workers.

Pres. McLaughlin said the tentative figure was $600 and $500 and asked for a vote The number was 17.

He asked for a vote of $600 and $700 - Vote was 12

Pres. McLaughlin reminded the group that the freeze should not be blamed on the Freeholders. This is Pres. Nixon and his committee.

He also explained that the 5½% if granted would also include any fringe benefits.

Mr. Lipisko stated the beginning point for bargaining should be $700 and $800, and not to mention any low figure.

The meeting was adjourned at 9:15 p.m."

To further support its position that Council 8 has properly represented its members, it has submitted in evidence several additional notices and communications.

Exhibit C-14, dated June 29, 1970, is a letter from Thomas McLaughlin, President, to County employees thanking the blue collar employees for selecting the Council to represent them and telling them, "Please feel free to contact me or any other officer or trustee of the Council if you have grievances or other problems".

Exhibit C-15, dated June 30, 1970, is a letter from Thomas McLaughlin to the Board of Chosen Freeholders advising them of an impasse

between Council 8 and representatives of the Freeholders because the wage proposals made to the Council during negotiations were "an insult to the intelligence of the County employees and their representatives".

Exhibit C-16, dated June 20, 1970, is a communication from Thomas McLaughlin to County employees advising them of the proposals submitted by the Council to the County in April 1970. It also stated, "It has always been and always will be the concern of the Civil Service Association that all civil servants be given just treatment in matters concerning salaries and grievances".

Exhibit C-17, dated May 9, 1970, is a communication sent by Thomas McLaughlin to the Board of Chosen Freeholders asking them to pay the increments and longevity benefits even though negotiations were still in process.

Exhibit C-18, which was distributed after the Blue Collar election, invited "... all County employees to attend the next regular meeting of the Council on March 10, 1970 .... and to file membership applications and become active in our organization".

Exhibit C-20 consists of three notices prepared and posted by Council 8 advising County employees to attend meetings on April 11, 1972, May 16, 1972 and June 6, 1972 to discuss developments during the negotiations then going on.

Exhibits C-21 and 22 are copies of grievances that were handled by Council 8 on behalf of Susie B. Tobias, dated March 17, 1969 and on behalf of Sr. Practical Nurses who were reclassified as Licensed Practical Nurses in September 1969. On December 22, 1969 the title of Sr. Practical Nurse was restored.

Mr. Disano further testified (T 12-18-72, 98, 99, 100) that over a period of three or four years he has handled forty or fifty grievances for employees in the Court House complex. One of them was for Mr. Nufrio who was referred to him by Mr. Marchiano, an officer of Local 550. He complained that he was not getting his share of overtime. Mr. Disano stated that he requested Mr. Nufrio to put his grievance into writing and then he immediately showed it to Mr. DeLuca, Assistant Superintendent of the Board of Public Works, who gave him assurances that it would be taken care of. On the following night Mr. DeLuca told Mr. Disano that he had "straightened it out last night on my way home". When he next spoke to Mr. Nufrio he told Mr. Disano that Mr. DeLuca told him "he's going to get everything straightened out". Mr. Nufrio, according to Mr. Disano, never asked him to do anything else about the matter.

Mr. Daniel Bragg, who has been employed by the County at Runnells Hospital for eighteen years, was the next witness. He testified (T 12-20-72, 122-145) that he has acted as a steward for Council 8 since it won the election and has handled numerous grievances for both white and blue collar employees at Runnells since 1970. He stated that he works as a chauffeur and had not received any complaints about employees not being able to reach him. He pointed out that Mr. James Farley, an X-ray technician working in the hospital, is also a steward.

Mr. Bragg testified that he has personally posted notices, such as those offered in evidence, concerning negotiations for both the 1970-71 and 1972-73 contracts at the time clock and in the cafeteria. He also stated that a notice has been posted in the dining area since January 1970 giving the names of the stewards. Moreover, Mr Bragg

testified, he has handled grievances as chief shop steward for the past twelve or thirteen years.

Mr. Bragg stated that he was present at the July 20th, 1970 meeting and he heard Mr. Ed Herlick, who works in the roads department, move that the negotiating committee again try to reach an agreement with the Freeholders and if that were not possible, all County employees should go on sick call. Mr. Bragg testified that he seconded this motion and also noticed that other members of the roads department were present at the meeting. This department repairs the roads at the hospital.

Mr. Bragg recalled that in 1969 he handled a grievance for Mr. Robert Shaver, a Detention Center Employee when the Detention Center was temporarily located at Runnells Hospital.

Mr. Bragg stated that Mr. James Farley consulted with him in reference to a grievance he was handling involving working conditions at Runnells. He recalled that it was difficult to get repairs done because the Detention Center was only temporarily located at the Runnells Hospital Center and the work had to be done by men who were located thirteen miles away at the Court House.

Mr. Bragg testified that Mr. Farley, on behalf of Council 8, prepared a letter (Exhibit C-22) to be sent to Mr. Mangione, Director of Classification, objecting to the downward classification of Senior Practical Nurses to Licensed Practical Nurses and showed it to him. As a result of this action the downward classification was rescinded.

According to Mr. Bragg, in the year 1973, Council 8 represented Betty Collins, an Institutional Attendant; Joseph Nolan, Hospital Guard;

and Harold Soucese, a groundskeeper; all of whom were discharged. As a result of the appeals taken by Council 8 they were reinstated.

Mr. Bragg testified (T 12-20-72, 144, 145) that Council 8 also represented Anna S. Trodnick, Mrs. Tobias, Karen Rice, and Junior Edwards, who had filed grievances.

Legal Argument

Determinations made by P.E.R.C. in recent cases clearly demonstrates that in County employment the appropriate units consist of all blue or white collar employees in the County.

In P.E.R.C. #69 it was determined that it would be inappropriate in Bergen County to have separate units for road, highway maintenance employees and dredge crewmen. The appropriate unit was held to be a County-wide blue collar unit and the Commission implied that it might also consider appropriate a larger County-wide unit consisting of blue collar and white collar employees.

The criteria used by the Commission in the Bergen County case are applicable in the present case. In the Bergen County case the Commission held:

> "In support of the broader county-wide unit are the following considerations. A centralized Personnel Department which performs all hiring and which establishes standards for filling vacancies, uniform personnel policies established pursuant to Civil Service, uniform fringe benefits (vacations, sick leave, hospitalization and medical coverage), a 40 hour week for blue collar employees, similarity of skills and basic functions within certain job titles regardless of departmental assignment or location, and in general the connotations that derive from the descriptive term "blue collar", such as manual work, skill of a level less than craft, which provide a common denominator that distinguishes this group from white collar, technical, craft etc.

The Commission is of the opinion that the Hearing Officer has correctly assessed the problem and that the consideration favoring a county-wide blue collar unit are substantial indicators of common interest whereas the opposing set of considerations tends to focus on a particular job and its immediate circumstances with little weight given to the more significant elements of employment which these jobs have in common with other blue collar jobs. We therefore adopt the Hearing Officer's findings and recommendation that the county-wide unit be found appropriate and that the petitions of Local 25 and Local 84 be dismissed on the ground that the units sought are inappropriate."

In P.E.R.C. #61 the Commission considered the petitions of two unions who sought to carve out smaller units from the large general unit. Local 866, affiliated with the International Brotherhood of Teamsters, sought to represent the bus drivers, and the AFSCME sought to represent custodial maintenance and cafeteria workers.

The determination of the Commission is applicable to the present case. The Commission held:

"The issue is correctly stated to be the appropriateness of the bus driver unit sought by the Teamsters. However, that question does not turn solely on whether there exists a community of interest among bus drivers. Undoubtedly, there is a kind of common interest among those of any group who perform the same duties. But the unit issue here cannot be determined by simply measuring the common interests of drivers, one to another, and ignoring other material facts, namely, that the drivers are part of an existing unit which is not on its face inappropriate and which has been the subject of two successive collective negotiations agreements. The statute requires that in defining units the Commission give "due regard" to community of interest. But, consideration must also be given to legislative intent and the statutory purpose which is declared to be, among other things, the promotion of permanent employer-employee peace 4/ or as Justice Francis phrased it "...establishment and promotion of fair and harmonious employer-employee relations in the public service." 5/

The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be

permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest."

In P.E.R.C. #58 where the facts are nearly identical to the situation in Union County it was held:

"The Employer and its employees have been subject to Civil Service rules and regulations for over 25 years and consequently there has been and is a general uniformity of treatment in matters of hiring, promotion, termination, title changes etc. The Freeholders retain authority on personnel matters for all county employees and do not delegate significant authority in this area to department or institution administrators. Thus, the administrator for Evergreen-Buttonwood makes recommendations on major personnel actions such as discharge, but does not have the final authority. Since 1949 there has been a single, county-wide wage and compensation plan assuring that occupants of the same job title are in the same pay range regardless of where they work. In that regard, there are several blue-collar classifications at Evergreen-Buttonwood which are also found elsewhere in the county. Thus, a maintenance repairman at Evergreen receives the same rate of pay as a comparable maintenance repairman elsewhere in the county. The compensation plan in effect in 1969 contains a number of provisions in addition to salary range, such as, longevity, overtime, vacations, life insurance, health insurance and sick leave. Each of the items, adopted by the Freeholders, applies uniformly regardless of job title or location of work. It is clear from the above that for a number of years the most significant aspects of personnel policy and authority have been formulated and exercised at the county level (or in conformity with Civil Service regulations) as opposed to departmental or other lower levels, and that such policies are implemented county-wide producing a substantial measure of uniformity in conditions of employment."

The determination by P.E.R.C. #68 has particular application to the petition by the Licensed Practical Nurses because in that case

an effort was made by groups of employees of the State of New Jersey to establish separate units for a number of various professional employees such as registered nurses, social workers, and department of education employees. All of these petitions were dismissed and a determination made that fragmentation of units would not be permitted.

In Union County there are a large number of policies uniformly applicable to both blue and white collar employees as a result of adherence to Title II of the Civil Service Statutes for a long period of time. These include hiring, firing, promotion, demotion, layoff, job security examiners, etc.

In addition, Union County has uniform policies regarding the following:

"1. Longevity payments. Longevity payments are made to employees in addition to base pay. These payments are based upon length of service.

2. Hiring, promotion, termination, title changes, etc. receive uniform treatment.

3. Applicability of civil service rules and regulations for 25 years.

4. Retirement system under the Public Employees Retirement System.

5. Vacations.

6. Medical examinations for employees are centralized.

7. Finger printing and police checks of all employees are centralized.

8. All personnel policy is centralized in the Department of Personnel, as set forth above.

9. Sick leave.

10. Personal leave and leave for death in family.

11. Leaves of absence.

12. Salary ranges within Title.

13. Holidays.

Council 8 also argues that there is a similarity of skills and basic functions within certain job titles regardless of departmental assignment or location and all titles are interrelated and depend on other titles in Union County.

The Council concludes that all the petitions should be dismissed.

POSITION OF THE BOARD OF CHOSEN FREEHOLDERS

The Board of Chosen Freeholders, hereinafter referred to as the Board, urges that all the petitions be dismissed for two main reasons.

1. The present unit is appropriate.

2. There is no evidence that employees have not been properly represented during negotiations or that their grievances have not been properly handled.

In support of its position that the present unit is appropriate, the Board points out that at the present time personnel policy in the County of Union is administered by a Personnel Director pursuant to a Resolution adopted by the Union County Board of Chosen Freeholders in July 1959. Its purpose was to meet "the need and necessity for establishing an integrated personnel policy with respect to the placement and supervision of personnel for the various County agencies."

The resolution provided:

> "The Personnel Director shall have the power to assign and recommend all personnel actions to the Finance Committee and appropriate committees of the Board of Chosen Freeholders, including appointments, promotions, transfers, layoffs, leaves of absences, sick leaves of employees and any other personnel action that may arise from time to time.
>
> The Personnel Director shall report to the Board of Chosen Freeholders and seek its approval when such approval is required by law and shall act as liaison between the Union County Board of Chosen Freeholders and the Finance Committee in all actions, matters and things effecting the personnel of the County of Union.
>
> The Personnel Director shall supervise the preparation and maintenance and cause to be prepared and recorded, appropriate

employees records for all County personnel and such records shall be located in a centrally located office in the Union County Court House or in any administration building of the County of Union."

Mr. James Carlin, who testified at length during the hearings, has occupied the position of Personnel Director since 1959 and has performed his duties in conformity with this resolution.

Mr. Carlin testified that the County has had a long established policy of uniformity concerning employees regardless of their titles or job duties, and this uniformity has been incorporated in all labor agreements. There has been uniform policies regarding longevity, hospitalization, vacations, sick leave, insurance and holidays. Moreover, Civil Service Rules uniformly apply to all County employees, for example, transfers, demotions, promotions, layoffs, the exercise of bumping rights, suspensions, removal and appointment to positions. When persons are determined to be eligible to fill any vacancy which may exist in a title, the existing eligibility roster for the County is used regardless of where the vacancy exists.

It is also alleged by the Board that employees of different departments are required to work together; for example, Court Clerks have assisted the Judges of the District Court, rather than merely working for the Judges of the County or Superior Courts.

Job titles and job descriptions throughout the County often overlap. Within the Roads and Bridges Department some employees work 40 hours and others work less than 40 hours. Some blue collar employees at Runnells Hospital have the same job classification as employees at the Departments of Roads and Bridges. The duties of Senior Engineering

Aides and Senior Highway and Bridge Inspectors are similar to the duties of laborers within the Departments of Roads and Bridges yet they work a 35 hour week and it is difficult to classify them as either blue or white collar workers. Building maintenance workers are located at the Court House, Runnells Hospital and other locations throughout the County. The job functions of Court Clerks are the same as Deputy District Court Clerks except that they work for different Judges, yet the petition of the Court Clerks would only sever those employees and create a separate unit for them. The job description for Detention Center employees is almost identical to the job description for employees at the Children's Shelter, yet only Detention Center employees seek a separate unit. Detention Center employees participated in the 1970 and 1972 negotiations. They demanded parity with jail guards and also time and one half pay which the jail guards were not receiving at the time.

To support its position that employees have been properly represented by Council 8 during negotiations, Mr. Carlin testified that the negotiations were carried on at arms length and covered a period of ten months on a weekly basis and were heated from beginning to end.

During the 1970 negotiations there was a threat of a sick out and the final wage settlement of $600 during the first year and $500 during the second year of a two year contract represented a compromise by both parties.

Council 8's insistence upon across the board increases resulted in a greater percentage benefit for blue collar employees since blue collar employees are generally in a lower pay scale.

Licensed Practical Nurses received a greater increase than Registered Nurses in the 1970 contract due to the efforts of Council 8.

The 1972 negotiations resulted in an additional two year contract between Council 8 and the County. Employees not represented by Council 8 received lower increases percentage wise. The final settlement was close to $5\frac{1}{2}$ percent.

The 1972 contract resulted in a $400 across the board increase for each year of a two year contract. The County was forced to make a major retreat with respect to its original position concerning longevity payments. This contract also provided for an additional step in the grievance procedure to provide for a review of departmental decisions by Mr. Carlin whose decisions are followed because of his position.

In the 1972 contract Licensed Practical Nurses obtained a 22.2% increase in shift differential, i.e. $1.00 for each year of the contract. Registered Nurses received no increase in shift differential.

Local 550 has filed a petition despite the fact that it lost the election in 1970. Council 8 won the election and has continuously represented all employees in the units certified in 1970 and has successfully negotiated two contracts with the County, each covering a two year period.

Union County presently has eleven bargaining units, ten of which negotiate directly with representatives of the Board of Freeholders. The eleventh unit, Probation Officers, negotiate independent of the

Board due to a ruling of the Administrative Director of the New Jersey Courts. Most of the eleven bargaining units were formed as a result of the requirements of the Public Employment Relations Act which requires separate units for police groups and supervisors. Registered nurses have two units. In 1970 it was determined that Licensed Practical Nurses were not professionals within the meaning of the Act.

The current number of bargaining units already presents problems to the County and Personnel Director who is required to spend a great deal of time negotiating in addition to trying to keep fringe benefits at the same level for all employees.

Legal Argument

A review of prior decisions of the Public Employment Relations Commission supports the position that employees represented by Council 8 do constitute an appropriate unit and all the petitions should be dismissed.

In the Matter of State of New Jersey (Neuro Psychiatric Institute et al) P.E.R.C. 50, January 15, 1971, the Commission, in rejecting requests for smaller units, held that they would not be appropriate for three reasons.

1. The administrative makeup of the employer was centralized.

2. The centralization of responsibility for policy and authority to regulate and implement the most significant aspects of labor relations and,

3. The basic consistency of the terms and conditions of employment throughout the state.

In the Burlington County case, P.E.R.C. No. 58, August 11, 1971, the Commission noted that there had been general uniformity of treatment in matters of hiring, promotion, termination, title changes, etc., and that provisions for longevity, vacations, life insurance, health insurance and sick leave were uniform.

The Commission said:

> "The most significant aspects of personnel policy and authority have been formulated and exercised at the County level as opposed to the departmental or other lower levels, and that such policies are implemented county wide, producing a substantial measure of uniformity in conditions of employment."

In Jefferson Township Board of Education P.E.R.C. No. 61, decided in October 1971, petitions were filed by two unions to sever bus dirvers in one group and clericals and custodials in another group from a unit which represented many titles of employees. In considering the appropriateness of separate units the Commission stated:

> "Undoubtedly, there is a kind of common interest among those of any group who perform the same duties. But the unit issue here can not be determined by simply ignoring other material facts, that the drivers are part of an existing unit which is not on it's face inappropriate and which has been the subject of two successive collective negotiation agreements. But consideration must also be given to legislative intent and the statutory purpose... promotion of permanent employer-employee peace ....
>
> Assuming that a community of interest exists between bus drivers should an existing relationship be disturbed absent instability or failure to provide responsible representation."

In the Matter of the State of New Jersey, P.E.R.C. No. 72, decided on November 30, 1972, the Commission found that the appropriate unit was state wide even though each State Teachers College was responsible for its own recruitment, appointment, promotion and teaching load. The Commission adopted the hearing examiner's report which found

the following factors determinitive of the petitions:

"1. The structure of State Colleges within the department of higher education is such that the levels of effective control and decision making are at the top and that the degree of local autonomy is not sufficient to allow for meaningful bargaining at the local level.

2. That statute does not require total reliance upon the community of interest.

3. The general purpose of State Colleges, wherever located, is the same, to provide education.

4. The State Board of Education exercises broad and comprehensive authority.

5. The job titles sought in each unit are not unique and are found throughout the state college system.

6. The State Board of Education had followed the statutory mandate regarding setting of policy on salary, fringes and establishment of personnel policies in detail.

7. There was a common employer.

8. There was centralized labor relations.

9. There is centralized budget making.

10. Hiring approval is centralized.

11. Insurance and vacation are uniform.

12. Benefits are not lost in a transfer from one department to another.

13. Pensions, sick leave, promotions, tenure are the same."

The Board concludes that:

"In reaching a determination the commission should consider that the appropriateness of the units was determined in 1970, nearly three years ago. In fact, one of the petitioners herein, sought to represent employees in a unit which it then thought was appropriate. Perhaps the fact that there was a bitterly contested election, which it lost, is responsible for its present determination that the unit is not appropriate. If the commission permits this union to now question the appropriateness of the bargaining units,

absent any change in circumstances, it will open the door for every union which loses an election to return and seek a redefinition of the appropriate unit. This could only cause permanent unrest and would not meet the objectives of the statute.

There has been no showing by any unit that there has been instability or failure to provide responsible representation by Union Council Number 8. In fact, the contrary has been adequately demonstrated. Union Council Number 8 has obtained benefits which other bargaining units have been unable to obtain, obtained higher increases on a percentage basis for its employees in two of the four years since it has been certified, has handled grievances when advised thereof, and has handled matters before the New Jersey Civil Service Association."

Discussion and Findings

The question to be determined is the appropriateness of the units sought by each of the Petitioners under the following provisions of Chapter 303, N.J. Public Laws of 1968.

C34:13A-6 "...The Commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of employees. 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 shall be appropriate which includes (1) both supervisors and nonsupervisors (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit..."

C34:13A-5.3 "...The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute..."

To determine the appropriateness of the units sought by the petitioners requires an analysis of several factors including:

1. History of negotiations.

2. Desire of employees.

3. Fair representation.

4. Community of interest.

5. Fragmentation.

The history of negotiations discloses that in December, 1969 and January and February, 1970 Union Council 8, New Jersey Civil Service Association, filed petitions to become public employee representative for all blue collar and white collar employees in Union County with the exception of certain units which by statute have separate unit status. Union County Employees Local 550, S.E.I.U., AFL-CIO, the intervenor, claimed that the appropriate unit under the Act consisted of all blue collar employees working on roads, bridges and engineering projects or at John E. Runnells Hospital, the Court House complex and elsewhere in the County.

Elections were held and Council 8 prevailed. On March 13, 1970 (Docket No R033) Council 8 was certified by P.E.R.C. to represent the white collar workers and on July 2, 1970 (Dockets No. RO 46 and RO 33) it was certified to represent the blue collar workers.

Council 8 has since entered into two collective bargaining agreements with the County.

The first agreement, effective from January 1, 1970 to December 31, 1971, was signed on December 10, 1970. Eight months later, on August 25, 1971, Local 550 filed the two petitions

herein considered. Subsequently the other petitions were filed. Hearings were commenced on October 27, 1971 and ended December 20, 1972. Post hearing and reply briefs were filed in March and June 1973. The second agreement, signed July 13, 1972, was effective from January 1, 1972 to December 31, 1973.

The results of the election indicate that the majority of the employees desire to be represented by Council 8.

The next factor to consider is whether Council 8 has breached its duty of fair representation.

Mr. D'Amato, testifying for Local 550, stated that he was not satisfied with the across the board increases of $600 in 1970 and $500 in 1971 negotiated by Council 8. Blue collar workers, according to Mr. D'Amato, should command a lot more money than white collar workers and are entitled to longer vacations than white collar workers because of the difference in the nature of the work. It would be very difficult for Council 8 to persuade the County to agree to these demands. The failure of Council 8 to obtain larger increases and more vacations for the blue collar worker is no evidence of a breach in its duty of fair representation.

The record discloses that negotiations extended over many months and on occasion were heated. At the meeting of July 20, 1970 there was talk of a sick out.

After comparing the evidence given by Council 8 to that offered by Local 550, I find that the evidence does not

support the claim that Council 8 failed to properly represent the employees in the unit sought by Local 550.

A careful reading of the transcript reveals that the loss of the election created tensions between the leaders of Local 550 and Council 8. Under these conditions it is not difficult to find reasons to complain.

The testimony given by witnesses for each of the Petitioners reveals dissatisfaction because their special needs were not satisfied by the contracts negotiated by Council 8, yet the record discloses that many of these special needs were presented at negotiation and some were obtained in the last contract.

In the give and take of negotiations it is not possible to satisfy all the demands of each special group even when there are good grounds for their demands. The mere failure to persuade the County to accept all demands is no proof of failure to fairly represent.

In Vaca v Sipes (386 US 171 (1967) the leading case in the question of fair representation, it was held that the obligation of fair representation is fulfilled when a union acts in good faith and is not arbitrary or discriminatory.

I find that there is no evidence that Council 8 acted in an arbitrary or discriminatory manner during negotiations.

The record shows that notices of meetings called to discuss the negotiations were posted and minutes of these meetings were kept.

It is pointed out that relatively few persons appeared at the 1970 ratification meeting held on July 30, 1970 at 8 PM. The record shows, however, that Council 8 posted notices of this ratification meeting which stated in part, "Please make every effort to attend since a crucial vote will be taken on the salary proposals submitted to your negotiating team by the Board of Chosen Freeholders negotiator".

It is common knowledge that it is not usual for meetings called by Union officials to be well attended. Therefore, the failure of Union members to appear at the ratification meeting is not in itself evidence that Council 8 failed in its obligation to properly represent its members.

It is also claimed that Council 8 has not properly handled grievances and persons designated as shop stewards refused to process grievances. The testimony given by witnesses for Local 550 showed that Mr. Fiorito, a designated shop steward, disclaimed that he was a shop steward and refused to handle a grievance. The record shows, however, that persons other than Mr. Fiorito, such as Mr. Disano and Mr. Bragg, were handling grievances and that many grievances were settled to the satisfaction of grievants.

There was some testimony which indicated that certain grievants were not satisfied with the settlements made. Since it is not always possible to settle the grievance in the manner requested by the grievant, mere dissatisfaction is not in itself proof of failure to properly handle grievances. There was no evidence of discrimination or capriciousness.

It was pointed out that the grievance procedure now in effect provides that the department head shall make the final decision subject to review by Mr. Carlin, who serves as Personnel Director for the County. It is true that this grievance procedure does not conform to the usual grievance procedure which terminates in final and binding arbitration, giving the grievant the opportunity for a review by an impartial third party. However, in the absence of evidence that grievances are being handled in an arbitrary and discriminatory manner, the absence of impartial arbitration is in itself insufficient to warrant a finding of unfair representation.

The next factor to consider is community of interest. In considering this factor we must go beyond the fact that persons performing the same work, such as Licensed Practical Nurses and Court Clerks, have in common special problems and interests. In the Jefferson Township case (P.E.R.C. #61) it was held:

> "The issue is correctly stated to be the appropriateness of the bus driver unit sought by the Teamsters. However, that question does not turn solely on whether there exists a community of interest among bus drivers. Undoubtedly, there is a kind of common interest among those of any group who perform the same duties. But the unit issue here cannot be determined by simply measuring the common interests of drivers, one to another, and ignoring other material facts, namely, that the drivers are part of an existing unit which is not on its face inappropriate and which has been the subject of two successive collective negotiations agreements."

This holding is particularly pertinent to the instant case.

Mr. Carlin, Personnel Director for the County, testified at length and in great detail concerning the interrelationships

that exist between the units sought by the petitioners and the rest of the employees represented by Council 8, and also the uniformity of personnel policies. The separate units sought by each of the petitioners are an integral part of an operating system and to sever these groups would result in fragmentation.

The petitioners, Licensed Practical Nurses Association, cited in support of its position the decision of the NLRB in Madeira Nursing Center, Inc., Cincinnati, Ohio, and National Union of Hospital and Nursing Home Employees, Local 1199H, Retail, Wholesale and Department Store Union AFL-CIO Case No 9-RC 9404, April 30, 1972, 203 NLRB No 42; 83LRRM1033. The Board held that:

> "...we are persuaded, in view of the educational requirements generally prevailing for the practice of licensed practical nursing and the pattern which exists for broad nursing home units excluding LPN's that we ought not, by a rigid insistence that LPN's always be included in overall nursing home units, preclude their exclusion from a unit petitioned for when, as here, they enjoy a substantial community of interest among themselves which is separate and distinct from the broader interests they share with other nursing home employees. In the instant case, as the LPN's involved are performing virtually the same nursing duties as RN's, we find that they, like the RN's have a community of interest separate and apart from the requested employees and that the interests the LPN's share with them are not such as to require their inclusion in the unit."

The Madeira case is distinguishable from the instant case on several grounds. In the Madeira case the "Regional Director found appropriate the Petitioner's requested unit of nurses aides, orderlies, housekeeping employees, maids, cooks, and kitchen employees at the Employer's Madeira, Ohio, nursing

home facility, excluding, among others, LPN's and RN's on the basis that they constitute identifiable homogeneous groups entitled to separate representation,...".

In other words, he found that the LPN's had a greater community of interest with the RN's, since both groups were responsible for patient care, than they had with those whose duties related to housekeeping.

The LPN's in the Madeira case were excluded from a bargaining unit consisting primarily of employees responsible for housekeeping; they were not separated from a certified unit consisting of all white and blue collar employees.

In the instant case the issue is whether it is appropriate to separate the LPN's from all other employees represented by Council 8. This is a different issue. Moreover, the Madeira case involves relatively few employees in a nursing home whereas in the instant case most of the employees in Union County are represented by Council 8.

The last factor to consider is the question of fragmentation.

This factor was considered in the Matter of Union Free School District No. 5, Town of Hemstead, Nassau County Case Nos C-0764/0772. P.E.R.B. held in that case that a separate unit for teachers aides was not appropriate. It followed the policy set forth in the Matter of Board of Cooperative Educational Services, Nassau County (4P.E.R.B. 4338, 4340, 1971) where the Board held that, "...a separate unit of teachers aides does not

constitute the most appropriate unit. Established Board policy militates against unit fragmentation of employees who share a community of interest in an overall unit, unless sharp conflict of interest are apparent between the employees whom a petitioner seeks to represent and all other employees".

In the Town of Hemstead case the Board also dismissed the petition for a unit consisting of bus drivers and custodial and maintenance personnel, excluding cafeteria workers. It was held that the fragmentation of only certain blue collar employees from an overall (blue collar) unit is not justifiable except when a sharp conflict of interest would prevent effective negotiations.

Although there is some community of interest within the units the petitioners seek to represent, a finding that these separate units were appropriate would cause a fragmentation.

In sum, Council 8 has been certified to represent a majority of the blue and white collar employees of Union County. There is insufficient evidence to support the claim that it has not provided responsible representation. Moreover, to permit a severance of the units sought by each of the petitioners would cause a fragmentation.

The following statement of policy made by the Public Employment Relations Commission in the Jefferson Township case, decided on February 3, 1971, is applicable to the instant case.

"The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit shought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

Here we have a unit created by recognition, not demonstrated to be inappropriate, covered by two successive agreements, and represented by an organization not shown to have provided less than responsible representation. Under these circumstances, the Commission is not prepared to upset that relationship on the single premise that bus drivers enjoy a variety of common interests. The Commission concludes that the unit sought is not one appropriate for collective negotiations in these circumstances."

RECOMMENDATIONS:

I recommend that all of the petitions be dismissed.

Maurice S. Trotta

MAURICE S. TROTTA
Hearing Officer

DATED: Aug. 28, 1973