

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

MIDDLESEX COUNTY BOARD OF
CHOSEN FREEHOLDERS,

Public Employer,

-and-

Docket No. RO-77-15

CIVILIAN EMPLOYEES, MIDDLESEX
COUNTY JAIL,

Petitioner.

SYNOPSIS

The Director of Representation, pursuant to an investigation which revealed no substantial and material factual issues in dispute, dismisses a Petition for Certification of Public Employee Representative filed by Petitioner seeking the formation of a negotiations unit consisting of 6 civilian County Jail employees insofar as the proposed unit is inappropriate. The Director finds the unit inappropriate because it fails to include other County employees whose job responsibilities are similar, and particularly, other County employees of the same department whose titles and functions are similar and overlapping. The Director determines that the physical proximity of the civilian employees to inmates as well as minor differences in terms and conditions of employment are not unusual circumstances which warrant that the unit be deemed appropriate. Additionally, the Director determines that the existence of twenty-one units of County employees does not create a circumstance which would make the proposed unit appropriate.

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Appearances:

For the Public Employer, William A. Ritter,
Labor Relations Specialist

For the Petitioner, Albert Lawlor, Jr.

DECISION

On August 11, 1976, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Civilian Employees, Middlesex County Jail (the "Petitioner"). The Petitioner seeks a secret ballot election to determine the representative of employees in a proposed unit consisting of secretarial assistant, food service supervisor, head cook, assistant head cook, cooks and paramedics employed by the County of Middlesex at the Middlesex County Jail (the "County"). The Petition is supported by an adequate showing of interest. Petitioner claims that the unit consists of six employees.

The undersigned has caused an administrative investigation of the Petition to be conducted in order to determine the facts. All parties

have been provided with an opportunity to present documentary and other evidence raising substantial and material factual issues which would warrant the convening of a hearing pursuant to N.J.A.C. 19:11-2.6(c).

On the basis of the administrative investigation herein the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-2.6(c), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The Middlesex County Board of Chosen Freeholders is a public employer within the meaning of the New Jersey ~~Employer-Employee~~ Relations Act, N.J.S.A. 34:13A-1.1 et seq., as amended (the "Act"), is the employer of the employees involved herein, and is subject to the Act's provisions.

3. Civilian Employees, Middlesex County Jail is an employee representative within the meaning of the Act and is subject to its provisions.

4. A valid Petition for Certification of Public Employee Representative having been filed, and the County having objected to the appropriateness of the proposed unit, there exists a question concerning representation. Accordingly, the matter is appropriately before the undersigned for determination.

5. The County's objection to the proposed unit and, hence, to a secret ballot election to be conducted among employees in that unit, is twofold. First, the County asserts that the creation of the proposed unit would result in undue multiplicity of negotiating units in the County.

Second, the County asserts that the employees in question should be included in an existing blue and white collar negotiating unit represented by New Jersey Civil Service Association, Middlesex Council No. 7 ("Council #7").^{1/}

6. On March 23, 1977, the undersigned advised all parties that the following facts, ascertained in the investigation, did not appear to be in dispute: (a) The County Jail as well as the County Workhouse are both under the jurisdiction of the Department of Corrections and Penal Institutions; (b) There exist similar and in some cases overlapping employment titles of civilian personnel employed at the County Workhouse and those employees in the proposed Jail employees unit; (c) The County and Council #7 agree that the Civilian titles employed at the Workhouse are represented by Council No. 7.^{2/}

Accordingly, the undersigned advised the parties that pursuant to the investigation there appeared to be no substantial and material factual issues in dispute. The undersigned stated: "A proposed negotiating unit which does not include all employees of similar job responsibilities, and moreover, personnel in overlapping titles in the same department, is not an appropriate unit for negotiations in the absence of unusual circumstances."

^{1/} While the Council has corresponded with the Commission with respect to this matter it has not requested intervention in these proceedings pursuant to N.J.A.C. 19:11-2.7. The County's 1975 Agreement with Council #7 describes Council #7's negotiating unit as including all County office clerical employees and [blue collar] employees of the Parks, Roads, Bridges, and Public Property Departments. The Commission has also received a copy of a recently expired negotiations agreement between the County and P.B.A. Local No. 219 which indicates that the petitioned-for civilian titles with the exception of the paramedics were included under the P.B.A. contract. The P.B.A. states that it has no objection to the severance from the unit of the petitioned-for civilian titles, and it too has not requested to intervene in these proceedings.

^{2/} It is unclear to the undersigned whether the employees of the County Workhouse are represented by Council No. 7's existing unit of blue and white collar employees. The determination as to the appropriate unit herein does not depend upon a resolution of this ambiguity.

The parties were advised of their obligations pursuant to N.J.A.C. 19:11-2.6 to present documentary and other evidence as well as statements of position relating to the Petition and were advised that in the absence thereof, and in the absence of substantial and material factual issues warranting the convening of an evidentiary hearing, the undersigned would proceed, pursuant to the above Rule, to dismiss the Petition.

7. The County has not responded to the undersigned's letter. On March 28, 1977, the Petitioner responded to the undersigned's request of March 23, 1977. In its letter, the Petitioner asserts that the civilian employees have unique working conditions and responsibilities, and it questions the County's concern for further fragmentation. With respect to the latter, the Petitioner argues that the County has allowed 21 units of employees thus far, and that to deny Petitioner's proposed unit is to deny to the civilian employees, the "same right to bargain as a group." The Petitioner asserts, as well, that the County has adequate labor relations personnel for negotiations, and that neither PBA Local No. 219 nor Council #7 object to the formation of the proposed unit. The main thrust of the Petitioner's letter, however, asserts that the civilian personnel at the jail come into direct contact with inmates charged with serious offenses, while the same civilian titles at the workhouse do not.

In a subsequent letter dated April 20, 1977, the Petitioner further clarified its position as to unique working conditions. In relevant part, the April 20, 1977 letter states:

"It has since come to our attention that the cooks in the Middlesex County Workhouse are assisted in cooking by inmates, whereas, here in the jail, the cooks do all the cooking themselves.

Furthermore, we in the jail, work an eight (8) hour day, not leaving the institution for lunch or breaks, whereas the normal run of the mill workday for other county employees gives them time for outside lunch and break periods. While on lunch and/or breaks, we in the jail are always on call in the event of an emergency.

In addition to this, most county employees commence the work day at 8:30 A.M. and complete work at 4:00 P.M. while we in the jail are always on duty for a full eight (8) hour day." 3/

The undersigned has carefully considered the positions of the Petitioner in support of the claimed unique working conditions of civilian jail employees and in support of the other reasons advanced as to why the Commission should deem the proposed unit appropriate. The undersigned, however, is not convinced, for the reasons stated below, that the proposed unit should be found as appropriate at this time.

As indicated in the undersigned's letter of March 23, 1977 (see paragraph 6, above), the undersigned has serious doubts as to whether the proposed unit limited to civilian employees at the jail is appropriate under any standard. For the reasons stated below, the Petitioner's responses to the undersigned's letter, assuming for these purposes their factual accuracy, have not raised in the undersigned's judgment substantial and material factual issues which may more appropriately be resolved after an evidentiary hearing. See N.J.A.C. 19:11-2.6(c)(2).

The Petitioner does not dispute the existence of overlapping employment titles and employees of similar job function in other divisions of

3/ A final letter addressed to the undersigned, received June 23, 1977, advised that the Petitioner has "signed an agreement" with a labor union and that "any further dealings with our group must be conducted between you and the County of Middlesex with that organization." The Petitioner however, has not requested to amend its Petition to reflect this asserted change; nor has it submitted a showing of interest reflecting this choice of employee desire. Additionally, the named employee organization has not communicated with the undersigned. The determination rendered herein as to unit appropriateness is not affected by a change of representative.

the Department of Corrections and Penal Institutions. Rather, it initially attempts to distinguish between the jail employees and the County Workhouse employees based upon the degree of danger involved in the performance of the assigned tasks. Secondly, it attempts to distinguish the difference in certain basic terms and conditions of employment between the jail personnel and workhouse personnel, and between the jail personnel and other county personnel, respectively.

The undersigned cannot accept the Petitioner's contention that based upon the physical proximity of the civilian jail employees to inmates, and minor differences in work schedule and lunch/break on call requirements, unusual circumstances exist warranting that only a negotiations unit consisting of civilian jail employees is appropriate. The undersigned takes note that the large majority of negotiations representatives serviced by the Commission under its various procedures adequately accommodate equivalent and far more significant diversant interests among various categories of employees in their broad-based units.

What has been displayed by the Petitioner is that civilian jail employees share similar job conditions and, as such, a community of interest. However, this alone does not mean that a unit limited to the jail employees is appropriate. Accordingly, based upon the above discussion, and particularly noting the overlapping job titles and similar job functions found in another division of the same County department, the undersigned cannot find that in the context of the circumstances presented the proposed unit meets the normal traditionally accepted standards of being appropriate.

The undersigned next turns to the Petitioner's position concerning fragmentation. In response to the County's claim that approval of the pro-

posed unit would result in undue multiplicity of County negotiations units, the Petitioner states that "since the County of Middlesex has thus far (as claimed) allowed 21 bargaining units to bargain, that we are again being denied our rights in that we are denied the same right to bargain as a group." The Association also states that the County has sufficient resources to negotiate with its units.

The undersigned observes that the County's acquiescence to the formation of 21 negotiations units appears to be at variance with its concern, now taken, for fragmentation.^{4/} However, the undersigned does not view the issue, as the Petitioner advances, as being primarily related to the adequacy of County resources to negotiate with one additional unit or with the denial of rights exercised by the other County employees. Rather, the relevant analysis in light of the County's multi-unit structure is whether, even though the Association's proposed unit is not appropriate under commonly accepted standards, the extent of organization of County employees has resulted in conditions which would outweigh the factors leading to the determination of inappropriateness rendered above. See In re New Jersey College of Medicine and Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977).

Consequently, the undersigned has reviewed the list of negotiations units which has been provided by the County. Of the 21 units listed thereon, 15 units are composed of employees who are either associated with the court system or have law enforcement responsibilities. Of the remaining seven units, two are actually units of personnel employed by the Middlesex County Welfare Board. The remaining five units are: (1) juvenile detention home -

^{4/} The Commission's records indicate that the Commission has certified eight County units, after elections in which the respective unit descriptions were agreed to by parties involved. Presumptively, the remaining units have been recognized by the County.

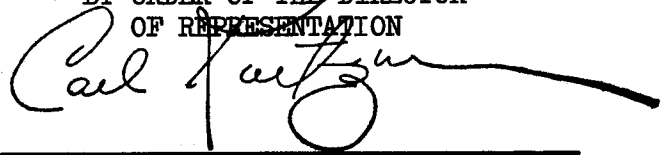
boys and girls supervisors; (2) health inspectors; (3) weights and measures personnel; (4) blue and white collar employees at Roosevelt Hospital, and (5) all County office clerical employees and blue collar employees of the roads, parks, bridge and public property departments. While the undersigned finds that the negotiating units acquiesced to by the County have tended to create a fragmented structure which, as a practical matter, precludes the formation of the most appropriate unit normally determined by the Commission, the undersigned is not convinced that the current structure of negotiating units in the County necessarily dictates a determination herein that a unit limited to six blue and white collar employees at the County Jail is therefore appropriate. There would appear to be ample possibilities for unrepresented blue and white collar County employees to associate and seek organization within a unit structure that would best be able to effectuate their rights under the Act. Accordingly, the undersigned cannot conclude, as does the Association, that the Jail employees are being denied the rights to collective negotiations at the same time as other employees are being permitted to assert those rights.

The undersigned is mindful that, as expressed by the Supreme Court in the Matter of State of N.J. and Professional Association of N.J. Dept. of Education, et al. 64 N.J. 231, 253 (1974), the ultimate organization of all employees who desire collective negotiations is a logical objective of the Act. Thus, the instant determination that the proposed unit limited to the jail is not appropriate at this time is not intended to create a circumstance which would for all effective purposes intolerably preclude the representation of any employees. Accordingly, if there is no movement for

a substantial period of time towards organization of the blue and white collar employees at the Jail in an appropriate unit as indicated above, the Association may, as stated in Professional Association "lay the matter of appropriate units before the Commission anew", 64 N.J. at 253, and the undersigned shall provide an opportunity to have the appropriate unit determination reviewed in light of subsequent events.

Accordingly, the undersigned for the aforementioned reasons, finds the proposed unit inappropriate within the context of this case and hereby dismisses the Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

A handwritten signature in cursive script, reading "Carl Kurtzman", written over a horizontal line. The signature is written in black ink and extends to the right of the line.

Carl Kurtzman, Director
of Representation

DATED: September 2, 1977
Trenton, New Jersey