D.R. NO. 80-14

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

In the Matter of

COUNTY OF MIDDLESEX,

Public Employer,

-and-

MIDDLESEX COUNTY HEALTH INSPECTORS SUPERVISORS ASSOCIATION,

DOCKET NO. RO-79-157

Petitioner,

-and-

MIDDLESEX COUNTY HEALTH INSPECTORS ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation adopts the findings and recommendations of a Hearing Officer that the Chief Sanitary Inspector and Senior Sanitary Inspectors employed by the Middlesex County Health Department are supervisors within the meaning of the Act and should be removed from a unit of Health Department employees including nonsupervisory personnel. The Director further directs an election among the supervisory employees finding that the proposed unit is prima facie appropriate and that there is no dispute between the employer and the petitioner concerning the appropriateness of the proposed unit.

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MIDDLESEX COUNTY HEALTH INSPECTORS SUPERVISORS ASSOCIATION,

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MIDDLESEX COUNTY HEALTH INSPECTORS ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Henry H. Orszulski, Middlesex County
Labor Relations Specialist

For the Petitioner
Mr. David A. Papi and Mr. Don N. Dingler

For the Intervenor
Mr. Dino A. Zarrella

DECISION AND DIRECTION OF ELECTION

On January 4, 1979, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Middlesex County Health Inspectors Supervisors Association (the "Seniors Association")

with respect to a proposed unit of senior sanitary inspectors, principal sanitary inspectors and the chief sanitary inspector employed in the Middlesex County Health Department of Middlesex County (the "County"). The Middlesex County Health Inspectors Association (the "Inspectors Association") intervened in the Petition based upon a recently expired collective negotiations agreement covering a unit of Health Department employees including the petitioned-for employees.

Pursuant to Notice of Hearing, a hearing was held before Commission Hearing Officer Joan Kane Josephson on May 14, 1979, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. All parties submitted post-hearing letter briefs and the Hearing Officer issued her Report and Recommendations on September 14, 1979, a copy of which is attached hereto and made a part hereof. No party has filed exceptions to the Hearing Officer's Report.

The Seniors Association claims that the proposed unit is appropriate, and that the employees should be removed from the unit represented by the Inspectors Association since they are supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and since their responsibilities place them in a conflict of interest with other Health Department employees. The County agrees that the proposed unit is an appropriate unit and is in essential agreement

with the positions of the Seniors Association. The Inspectors Association urges the continued inclusion of the petitioned-for employees in the Health Department unit, claiming that any conflict of interest is de minimis in nature.

The Hearing Officer, finding that the Senior Sanitary Inspectors effectively recommend discipline and impose certain discipline, concluded that the Senior Sanitary Inspectors were supervisors within the meaning of the Act. 1/ The Hearing Officer further concluded that the Chief Sanitary Inspector, as the next line supervisor above the Senior Sanitary Inspector, a fortiori is a supervisor of Sanitary Inspectors. 2/

The undersigned has reviewed the entire record including the transcripts, the exhibits and the Hearing Officer's Report, and notes the absence of any exceptions to the findings and recommendations of the Hearing Officer that the Chief Sanitary Inspector and Senior Inspectors are supervisors within the meaning of the Act and should be removed from the unit including Sanitary Inspectors. A review of the record reveals that there is ample evidence to support the findings and recommendations of the Hearing Officer

1/ N.J.S.A. 34:13A-5.3 provides that supervisors "having the power to hire, discharge, discipline or effectively recommend the same ... " may not be included in negotiations units with nonsupervisory employees unless certain statutorily designated exceptional circumstances are present.

2/ The record indicates that the position of Principal Sanitary Inspector is a vacant position.

that the employees in question are supervisors within the meaning of the Act. Accordingly, the undersigned hereby adopts the findings and recommendations of the Hearing Officer for the reasons expressed in her Report.

The Hearing Officer, however, recommended that the unit proposed by the Seniors Association, limited to the supervisory employees of the Health Department, be dismissed. The Hearing Officer based this recommendation upon the Commission's policy of favoring the creation of broad-based functional negotiations units as opposed to the formation of numerous small units, notwithstanding the fact that a community of interest may exist within a smaller, limited unit. The Hearing Officer noted the decision of the Supreme Court in State of New Jersey v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974) wherein the Court approved the Commission's broad-based unit concept and further observed that in disputed cases the Commission was obligated to designate the "most appropriate unit." Accordingly, the Hearing Officer suggested that the only appropriate unit would be a broad-based unit including the petitioned-for employees and recommended the dismissal of the instant Petition.

Although the Commission favors the creation of broad-based functional units, the Commission also maintains a policy of not intervening in matters concerning unit definition in the absence of a dispute. Where there is no dispute, the Commission has approved

agreements of parties which designate prima facie appropriate units of employees who share a community of interest. The Inspectors Association raised a dispute concerning the proposed removal of the petitioned-for employees from its unit and urged the continuation of the unit which exists in its present form. However, since it is determined that the Inspectors Association may not continue to represent supervisors in its unit, or in any other unit, the dispute which the Inspectors Association has raised over the creation of a proposed health inspectors supervisory employees unit is now moot. The County and the Seniors Association agree that the proposed unit is appropriate. The undersigned finds that a unit consisting of all supervisory personnel in the Health Department is prima facie appropriate and, therefore, in the absence of a dispute between the parties at interest, approves the agreement between the County and the Seniors Association as to the formation of such unit.

Accordingly, the undersigned shall direct an election in a unit including: all supervisory employees in the Middlesex Health Department of Middlesex County including the chief sanitary inspector and senior sanitary inspectors, but excluding managerial executives, craft and professional employees, confidential employees, police and nonsupervisory employees.

The undersigned directs that a secret ballot election be conducted among employees in the unit found appropriate no later than thirty (30) days from the date set forth below. Those

eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with the undersigned and with Middlesex County Health Inspectors Supervisors Association an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the election. A copy of the eligibility list shall be simultaneously filed with the Middlesex County Health Inspectors Supervisors Association, with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations

by the Middlesex County Health Inspectors Supervisors Association.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting at the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR
OR REPRESENTATION

Carl Kurtzman, Director

DATED: November 16, 1979
Trenton, New Jersey

H.O. NO. 80-7

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

In the Matter of

MIDDLESEX COUNTY HEALTH DEPARTMENT,

Public Employer,

-and-

MIDDLESEX COUNTY HEALTH INSPECTORS SUPERVISORS ASSOCIATION,

Petitioner,

-and-

MIDDLESEX COUNTY HEALTH INSPECTORS ASSOCIATION,

Intervenor.

Docket No. RO-79-157

SYNOPSIS

A Commission Hearing Officer recommends dismissal of a Representation Petition for a unit limited to health inspector supervisors finding that such a small functional unit would not be the most appropriate unit. The Hearing Officer sets forth in her Report and Recommendations the appropriate mechanism by which representation of the non-represented supervisors may be accomplished based upon In re Parsippany-Troy Hills Township Board of Education, D.R. No. 79-7.

The Hearing Officer recommends that the senior, principal and chief sanitary inspectors be excluded from the existing unit of sanitary inspectors because they are supervisors who can discipline employees in the existing negotiations unit and because a conflict of interest exists arising from their day-to-day supervision of the sanitary inspectors. This conflict negates an otherwise existing community of interest.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

H.O. NO. 80-7

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

In the Matter of

MIDDLESEX COUNTY HEALTH DEPARTMENT,

Public Employer,

-and-

MIDDLESEX COUNTY HEALTH INSPECTORS SUPERVISORS ASSOCIATION,

Petitioner,

-and-

MIDDLESEX COUNTY HEALTH INSPECTORS ASSOCIATION,

Intervenor.

Docket No. RO-79-157

Appearances:

For the Public Employer
Henry H. Orszulski, Middlesex County Labor Relations Specialist

For the Petitioner
David A. Papi and Don N. Dingler

For the Intervenor
Dino A. Zarrella

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on January 4, 1979, by the Middlesex County Health Inspectors Supervisors Association (the "Seniors Association") seeking to represent a unit of senior sanitary inspectors, principal sanitary inspectors and the chief sanitary inspector employed in the Middlesex County Health Department of Middlesex County (the "County"). The Middlesex County Health Inspectors Association (the "Inspectors Association") submitted

a recently expired collective negotiations agreement representing the petitioned-for positions and was granted intervenor status pursuant to N.J.A.C. 19:11-2.7.

The County and the Seniors Association argue that the petitioned-for unit is appropriate and that the titles petitioned for should be removed from the Inspectors Association because they are statutory supervisors with the authority to effectively recommend disciplining of sanitary inspectors and, additionally, argue there is an inherent conflict between the titles. The Seniors Association also argues that the conflict that exists between supervisors and non-supervisors creates internal union conflict within the Inspectors Association that inhibits the sanitary inspectors as well as the senior sanitary inspectors. The Inspectors Association, while conceding a de minimus amount of supervision of sanitary inspectors, posits that a conflict that exists among the employees in the unit is the result of individual personality conflicts and not supervisory responsibilities.

Pursuant to a Notice of Hearing, the undersigned Hearing Officer conducted a hearing on May 14, 1979, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Subsequent to the close of hearing all parties submitted letter briefs, all of which were received by June 5, 1979.

Based on the entire record in this matter I make the following

FINDINGS OF FACT

1. The County is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended (the "Act"), is subject to its provisions, and is the employer of the employees who are the subject of this proceeding.

2. The Middlesex County Health Inspectors Supervisors Association and the Middlesex County Health Inspectors Association are employee representatives

within the meaning of the Act and subject to its provisions.

3. A timely Petition for Certification of Public Employee Representative has been filed. The County and the Inspectors Association are parties to a collective negotiations agreement effective January 1, 1978 until December 31, 1978. 1/ The recognition clause of the contract recognizes the Association as the exclusive bargaining agent for all Middlesex County Sanitary Inspectors. 2/ The Inspectors Association has been the majority representative for these employees since 1973 when it was recognized by the County.

4. The Middlesex County Health Department is comprised of a Director, Deputy Director, Chief Sanitary Inspector (also referred to as Chief Sanitarian), three Senior Sanitary Inspectors and 12 Sanitary Inspectors. 3/

5. The main office of the health department is in Highland Park and the county is divided into three districts, northern, central and central/southern. One senior is assigned to each district which operates out of a district or branch office. The sanitary inspectors are assigned to 15 specific municipalities (some inspectors have dual municipalities) who contract with the Middlesex County Health Department for public health services, e.g., inspecting food-handling establishments, investigating environmental problems, investigating communicable diseases, etc.

6. The sanitary inspector reports directly to his/her assigned municipality but must check in and out daily with the district senior inspector. 4/

1/ J-1 in evidence. The Supervisors voluntarily withdrew a prior petition submitted on November 1, 1978, when the timeliness of that petition was questioned and filed the instant petition on January 4, 1979. (See Docket No. RO-79-130)

2/ Included in this designation are: Sanitary Inspectors, Senior Sanitary Inspectors, Principal Sanitary Inspectors and Chief Sanitarian.

3/ The position of Principal Sanitary Inspector is unfilled and apparently has never been filled (Tr. p. 8). There are also clerical and technical employees that are not pertinent herein.

4/ Each day the inspector reports in to the branch office by telephone on arrival (I-4 in evidence), which may be verified by the senior by a call back and reports out at the end of the day (P-4 in evidence). A memo from Senior Sanitary Inspector Papi to sanitary inspectors in the southern district dated October 3, 1977, indicates inspectors who are habitually late will be docked. Sometime in 1977 Senior Inspector Papi had all inspectors in the southern district report in person to the branch office as a disciplinary measure because of tardiness.

Except when precluded by an emergency, the sanitary inspector must obtain prior approval from the senior for overtime work in the assigned municipality. 5/

The senior sanitary inspector may set priorities of work within that jurisdiction, or assign supplemental work within the jurisdiction, 6/ and may also assign sanitary inspectors work outside their assigned municipality. 7/ Seniors are not assigned specific municipalities but assist inspectors in the field when called in on complex problems. If a senior is unavailable, the chief is called or the deputy director or director. Seniors do liaison work with local boards of health, mayors, and county and State agencies (Tr. 85).

7. Senior inspectors supervise sanitary inspectors on a daily basis. The seniors with the chief establish daily workload standards. 8/

Sanitary inspectors submit to senior sanitary inspectors for review: weekly work reports, weekly percentage reports, monthly field activity reports and weekly retail food inspection reports (Tr. 30). The senior may reject and return these reports to the inspector (Tr. 22). District staff meetings are called by the seniors on an irregular basis to discuss new policies and/or procedures. The chief is generally invited but does not always attend.

9. Annual and when possible semi-annual evaluations of sanitary inspectors are conducted verbally by the senior inspector together with the chief. The chief then makes a written evaluation which is placed in the individual's personnel folder. 9/

5/ Tr. 14, 26 and 75. Seniors may refuse to approve overtime requests.

6/ See P-1, P-3 and P-5 in evidence.

7/ Examples of such work are taking a dead animal to Trenton for a rabies test or inspecting the county workhouse (Tr. 19 and 43).

8/ P-1 in evidence, May 2, 1979 memo from seniors to inspectors setting time frame for completion of retail food inspections with threat of disciplinary action for non-compliance, and Tr. 44.

9/ The deputy director testified that a new evaluation procedure had been established in 1979 but that the procedure had been developed over the past year and a half.

10. Hiring and firing of sanitary inspectors are infrequent but when done the ultimate decision is made by the director and deputy director. The senior's recommendation would be considered but independent inquiry would be made. The same procedure is followed in serious discipline cases (Tr. 67-70); however, the seniors may unilaterally impose certain disciplinary measures (see n. 4 above on tardiness).

11. The chief sanitary inspector reports to the health director and deputy director and at their direction is responsible with the three senior inspectors for the supervision of their field operations (Tr. 143). His office is located in the main office in Highland Park. Inspectors' reports handed in to seniors are passed on to the director through the chief. The chief is responsible for organizing training programs. He must see that certain health programs are conducted and is responsible for establishing new programs and policies as the need arises (Tr. 144-146). He has input in budget preparation (Tr. 143). The chief has a role in evaluation of seniors; however, no written evaluations have been completed by him. He does not have an independent role in disciplining or evaluating seniors (Tr. 147 and 159).

12. Conflicts that repeatedly occur within the current Middlesex County Health Inspectors Association are partially due to personality conflicts within the unit; [10/] however, conflicts are increased along supervisor/non-supervisor lines and there is potential for increased conflict. Certain witnesses testified they would not vote against a supervisor in an open meeting because of fear of reprisal in work assignments. [11/]

10/ Two of the three seniors argued the case for severance herein and the third senior argued the case for non-severance.

11/ In spite of the investigatory nature of the hearing, some witnesses were incredibly apprehensive and others totally biased and inveracious.

THE ISSUE

1. Should the chief sanitary inspector and the senior sanitary inspectors be excluded from the current unit because (a) they are supervisors within the meaning of the Act; and/or (b) actual or potential substantial conflicts of interest are generated by their inclusion in the same negotiations unit with the sanitary inspectors?

2. If it is found that the petitioned-for employees should be excluded, is the petitioned-for unit the most appropriate unit?

ANALYSIS AND CONCLUSIONS OF LAW

The petitioners are statutory supervisors within the meaning of the Act.

N.J.S.A. 34:13A-5.3 provides in part that no "...supervisor having the power to hire, discharge or discipline or effectively recommend the same has the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership." 12/

As the above Findings of Fact of the Hearing Officer indicate (see #10), only the director and deputy director have the authority to hire and fire. The senior inspector plays a significant role in evaluating trainees. As to disciplining, while senior inspectors cannot impose major disciplinary action, e.g. suspension, or effectively recommend it, the seniors can effectively recommend (Tr. 86) and even unilaterally impose certain discipline (see n. 4 above). Therefore, since I find them to be supervisors within the meaning of the Act, I recommend that they be removed from the negotiations unit represented by the Middlesex County Health Inspectors Association.

12/ For the Commission analysis of statutory supervisor see In re Lakewood Board of Education, D.R. No. 78-44, 4 NJPER (¶4105 1978) and In re Brookdale Community College, D.R. No. 78-10, 4 NJPER (¶4018, 1977) and In re Freehold Regional High School, D.R. 78-41, 4 NJPER (¶4090, 1978).

The petitioners are supervisors because a substantial conflict of interest is generated by their inclusion in the present unit.

There exists a conflict of interest herein sufficient to warrant the exclusion of the chief and senior sanitary inspectors from the sanitary inspectors' negotiations unit even if they were not found to be statutory supervisors.

In Board of Education of West Orange v Wilton, 57 N.J. 404 (1971), the New Jersey Supreme Court examined the relationship of the composition of negotiations units vis-a-vis the Act's mandate to foster fair and harmonious employer-employee relations within a negotiations unit.

The court noted in Wilton at p. 427:

> "...we hold that where a substantial actual or potential conflict of interest exists among supervisors with respect to their duties and obligations to the employer in relation to each other, the requisite community of interest among them is lacking, and that a unit which undertakes to include all of them is not an appropriate negotiating unit within the intendment of the statute."

The court examined to what extent the reasonableness and good faith performance of the obligations a supervisor owes his/her employer has the capacity actual or potential, to create a conflict of interest with those whose work he/she is obliged to oversee and evaluate for the employer.

I find based on the above findings of fact [13/] that the supervisory powers delegated to senior sanitary inspectors creates a conflict for them between the obligation owed the employer and the relationship with those they supervise which negates a community of interest that might otherwise exist. Evidence of a

13/ The Seniors are involved in day-to-day supervision of the Sanitary Inspectors. See Findings of Fact 6 (evaluation of reports), 7 (special assignments and overtime approval), 8 (daily supervision), and 9 (annual evaluations). Seniors have significant role in the disciplining of sanitary inspectors.

conflict beyond a personality conflict has been demonstrated (see Finding of Fact 12 above). This conflict hinders the harmonious labor relationship to which the employer and all the employees are entitled. Since the chief is the next line supervisor above the seniors, it follows that he too is a supervisor as to the sanitary inspectors. I do not find, based on Finding of Fact 11 that the chief is a supervisor as to the senior sanitary inspectors.

Therefore, in view of this conflict and the supervisory duties of the seniors and the chief, I recommend that those titles, and the principal sanitary inspector, should the position be filled, be removed from the Middlesex County Health Inspectors' Association.

Is the petitioned-for unit appropriate.

Under the mandate of State of New Jersey v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974) the Commission must determine the most appropriate unit in disputed cases. The court endorsed the Commission's adoption of the concept of broad-based, functional negotiations units over more numerous smaller ones which might on their own be appropriate, but are less appropriate than larger units where a community of interest exists.

The Middlesex County Health Inspectors Supervisors' Association Petition for Certification of Public Employee Representative seeks to establish a unit for collective negotiations that is a functional unit consisting of three Senior Sanitary Inspectors and one Chief Sanitary Inspector. This is not the broad-based type unit envisioned by the Supreme Court in the State Professional case and therefore the undersigned does not find it to be the most appropriate unit.

There are procedures available in order for the employees petitioned for herein to accomplish representation for collective negotiations within the most appropriate structure.

A broad-based appropriate unit which would include these employees in its collective negotiations unit may request recognition from the County. Failing recognition, such unit may file a Petition for Certification of Public Employee Representation requesting certification of the most appropriate unit.

In the event a petition for the most appropriate unit is not filed, the petitioners herein may petition anew and request the Director of Representation to consider that petition in the context of that portion of the Supreme Court's decision in State v. Professional Association of Department of Education, supra, which indicates (at p. 253) that a later determination might allow for the authorization of a unit of less than the total body. 14/

Accordingly, for the reasons stated above, the undersigned recommends that the Senior, Principal and Chief Health Inspectors be removed from the negotiations unit represented by the Middlesex County Health Inspectors Association but that the petition seeking certification of the Middlesex County Health Inspectors Supervisors Association as the majority representative of these employees be dismissed.

Respectfully submitted,

Joan Kane Josephson
Hearing Officer

DATED: September 14, 1979
Trenton, New Jersey

14/ See Director's decision in In re Parsippany-Troy Hills Township Board of Education, D.R. No. 79-9, 4 NJPER 4177 (1978).