

D.R. NO. 81-3

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

In the Matter of

COUNTY OF CAMDEN,

Public Employer,

-and-

REGISTERED PROFESSIONAL NURSING
UNIT #1,

DOCKET NO. RO-80-56

Petitioner,

-and-

CAMDEN COUNCIL #10, NEW JERSEY
CIVIL SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, agreeing with the recommendations of a Hearing Officer, determines that registered nurses shall be removed from an existing County negotiations unit and may choose a representative through a secret ballot election in a unit comprised of registered nurses. The Director finds that the current majority representative has not provided responsible representation to the nurses and that the intra-union relationship in the circumstances presented is instable.

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

In the Matter of

COUNTY OF CAMDEN,

Public Employer,

-and-

REGISTERED PROFESSIONAL NURSING
UNIT #1,

DOCKET NO. RO-80-56

Petitioner,

-and-

CAMDEN COUNCIL #10, NEW
JERSEY CIVIL SERVICE ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Vincent Paglione, Assistant County Counsel

For the Petitioner
Tomar, Parks, Seliger, Simonoff & Adourian, attorneys
(Mary L. Crangle of counsel)

For the Intervenor
Joseph A. Carmen, attorney

DECISION AND DIRECTION OF ELECTION

On October 3, 1979, the Registered Professional Nursing Unit #1 ("RPNU") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission (the "Commission") with respect to a proposed unit

comprised of all registered nurses employed by the County of Camden at the Lakeland Institution Complex. Camden Council #10, New Jersey Civil Service Association ("Council 10") is currently the recognized representative of a unit of county employees including these registered nurses and has intervened in the instant proceeding.

Council 10 objects to the removal of the registered nurses from its collective negotiations unit and opposes a separate unit for such nurses. The County does not object to the creation of a separate negotiations unit for the registered nurses.

Pursuant to a Notice of Hearing, hearings were held before Commission Hearing Officer Joan Kane Josephson, on January 9 and 21, 1980 in Trenton, New Jersey, at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. The County did not participate at the hearing. Council 10 and RPNU submitted post hearing briefs and the Hearing Officer issued her Report and Recommendations on May 9, 1980. A copy of the Hearing Officer's Report and Recommendations is attached hereto and made a part hereof. Council 10 filed exceptions to the Hearing Officer's Report on May 21, 1980.

The undersigned has considered the entire record herein including the Hearing Officer's Report and Recommendations, the transcript, the exhibits and the exceptions, and on the basis thereof finds and determines as follows:

1. The County of Camden is a public employer within the meaning of the New Jersey Employer-Employee Relations Act

N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this proceeding and is subject to the provisions of the Act.

2. The Registered Professional Nursing Unit #1 and Camden Council #10, New Jersey Civil Service Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. The RPNU seeks to represent a unit of all registered nurses employed by the County at the Camden County Health Services Center at Lakeland. To accomplish such result, the RPNU seeks to sever the registered nurses from their inclusion in the currently recognized broad-based countywide unit represented by Council 10.

The RPNU is already recognized by Council 10 and the County as the representative of registered nurses within the Council 10 unit. The recognition clause of the current agreement between the County and Council 10 provides in part that:

The Camden County Board of Chosen Freeholders recognizes Camden Council #10, New Jersey Civil Service Association (Registered Professional Nursing Unit #1, R.P.N.U.), as being the exclusive bargaining agent for the purpose of establishing salaries, wages and hours for all R.N.s in the classifications listed and attached herein and by reference made a part of this agreement as Appendix B.

Under this somewhat unusual arrangement, Council 10 has been responsible for negotiating the major terms and conditions of employment for unit members on a countywide level; however, the

RPNU has been permitted to negotiate the "local" issues concerning registered nurses. By filing the instant Representation Petition, the RPNU desires to terminate the existing relationship and seeks Commission certification as the exclusive representative for the registered nurses.

4. After examining evidence with respect to the processing by Council 10 of grievances filed by registered nurses and with respect to Council 10's involvement in negotiations between the County and the RPNU, the Hearing Officer concluded that the instant relationship was not stable and that Council 10 had not provided responsible representation.

5. In excepting to the Hearing Officer's Report, Council 10 argues:

The transcript of this matter basically consists of the testimony of two people, Mark Kunzinger and Ann Henkle. For all the hours of hearings in this matter, the Hearing Officer seems to conclude that basically the filing of one grievance by Mr. Kunzinger is tantamount to lack of responsible representation by the Intervenor.

In the final analysis, our contention remains the same. The Commission is allowing this case to proceed based upon the action of two people, that is, Kunzinger and Henkle. There has been contentions of instability and lack of responsible representation for years and yet at all hearings it has been the testimony of two people and two people only. In an action where the Petitioner has the burden of proof it is, in our opinion, outrageous that the Commission can be moved by such a transparent and absurd "Catch-22" type of argument.

In addition, Council 10 excepts to the Hearing Officer's reference to an unfair practice charge involving the parties which is presently before the Commission.

6. In In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971) the Commission established the standard for severance of employees from appropriate collective negotiations units. The Commission stated:

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 W. Milford Bd. of Ed., P.E.R.C. No. 56 (1971) the Commission stated:

The measure of fair representation is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances.

Accordingly, the issue placed before the undersigned is whether Council 10 has met its responsibility in the processing

of grievances and in the negotiation of agreements in a manner which would constitute responsible representation of the interests of unit members and/or whether the instant intra-unit relationship is unstable.

An examination of the record reveals that Council 10 is responsible for the processing of a grievance in the event that the grievance remains unresolved after the second step, i.e., the Lakeland level. The testimony of RPNU witnesses indicated a frustration on the part of registered nurses with the administration of the grievance process. They testified that, while grievances would succeed at the level of the Lakeland Institution administration, those grievances which required monetary compensation would nevertheless be denied at the County level. In addition to generalized statements concerning its frustration, the RPNU identified two specific formal grievances illustrative of its frustrating grievance processing experience. In these cases it had requested that Council 10 move the grievances to binding arbitration because of their unsatisfactory resolution. The evidence with respect to one of the grievances is supported by a series of exhibits which document numerous communications with the president of Council 10. The unrefuted testimony reveals that with respect to the first grievance no demand for binding arbitration was made upon the County and neither the grievant nor the RPNU was advised of the refusal by Council 10 to submit the matter to binding arbitration and, attendantly, the reasons

for non-pursuit. With respect to the second grievance, which was submitted by the chief negotiator for the RPNU, the testimony reveals that after repeated telephone contacts the President of Council 10 advised the grievant that Council 10 would not move the grievance to binding arbitration and declined to advise the grievant why a demand would not be made for arbitration. The undersigned notes that at the time the grievance was pending, the RPNU, Council 10 and the County were engaged in negotiations toward an agreement for the nurses which would be attached to the master Council 10 collective negotiations agreement. The undersigned further notes that this grievance was eventually successfully resolved after direct meetings between the grievant and a County freeholder which bypassed Council 10.

The record reveals that the negotiations concerning the separate agenda of the special concerns of the nurses were difficult negotiations. The negotiations sessions which were attended by County and RPNU representatives and often by the President of Council 10, were sometimes accompanied by disputes between the RPNU and Council 10 over the propriety of certain benefits for nurses proposed by the RPNU for inclusion in the contract. In one case Council 10 objected to leave time for nurses to attend a nurses convention. In another case Council 10 objected to improved vacation benefits for nurses which the County and the RPNU had apparently agreed to. The evidence reveals that agreement was finally reached on an addendum by County and RPNU negotiators at a

session which was not attended by Council 10's President. However, the draft of the agreement was submitted to the Council 10 President for typing and for subsequent submission to the RPNU and the County. Upon receipt of the typed version, the RPNU representatives discovered that certain terms which had been agreed upon by the County and the RPNU had been changed by the Council 10 President. RPNU representatives made repeated efforts to contact the Council 10 President, seeking to discuss these differences. However, it appears that the President of Council 10 was resistant to meeting with the RPNU representatives and purposely avoided attending a meeting when one was finally scheduled. Eventually, the nurses engaged in a job action and were successful in meeting directly with County representatives to resolve those areas that were changed in the draft prepared by Council 10's President.

Based upon the above, the undersigned is in agreement with the Hearing Officer's conclusion that Council 10 has not provided responsible representation to registered nurses and that the existing intra-unit relationship is unstable. An organization which fails to advise employees that formal grievances, wherein requests have been made for binding arbitration, will not be submitted to arbitration and fails to advise employees of the reasons for refusing to submit grievances to arbitration is acting in an arbitrary manner and is not affording responsible representation. Considering that one of the grievances was presented by the chief negotiator for the RPNU and the rejection of the further processing

of the grievance occurred at the same time that the parties were engaged in difficult negotiations, leads the undersigned to the reasonable presumption that the individual was being targeted for invidious representation because of the active disagreement that ensued between Council 10 and the RPNU. This circumstance is evidence of the degree of instability in the relationship existing between the RPNU, Council 10 and the County.

Furthermore, Council 10 did not provide responsible representation when it changed the agreement, reached between RPNU and the County without advising the RPNU of the changes and without responding to the RPNU's request to meet with Council 10. The fact that the County and RPNU representatives later succeeded in resolving the dispute in the absence of Council 10 participation reflects as well upon the instability of a relationship which includes Council 10, the RPNU and the County. The fact that RPNU's chief negotiator and a County Freeholder bypassed Council 10 to resolve the former's grievance also reflects such instability.

Accordingly, the undersigned concludes that the RPNU has met its responsibility to demonstrate that Council 10 was not providing responsible representation to registered nurses and that the existing relationship is unstable. Council 10 chose not to present any witnesses to rebut the presentations made by the RPNU.

The undersigned concludes that the irresponsible representation provided herein and the instability of the existing relationship are such as to require the extraordinary result of

severing the registered nurses from the existing Council 10 unit.

Additional factors support this result. First, the registered nurses are a minority grouping of professional employees in a basically nonprofessional unit. The manner in which they were included in the unit has been placed in question. The Legislature in adopting N.J.S.A. 34:13A-6(d) provided special self-determination privileges to professional employees concerning their inclusion in units with nonprofessional employees, thereby recognizing the unique and separate interests of professional employees. Second, the employer herein has consented to a separate unit of registered nurses.

Finally, the undersigned notes that the Hearing Officer below did not improperly refer to an existing unfair practice proceeding before the Commission. Her factual findings and recommendations were solely construed from the record obtained in the representation hearing below.

Accordingly, the undersigned determines that the County's registered nurses at the Lakeland Institution comprise an appropriate unit and may select their exclusive representative, if any, at a secret ballot election conducted by the Commission. Therefore, the undersigned finds that the appropriate unit is: all registered nurses employed by the County of Camden at the Lakeland Institution Complex, but excluding nonprofessionals, managerial executives, confidential and craft employees, police and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described

above. The election shall be conducted no later than thirty (30) days from the date set forth below.

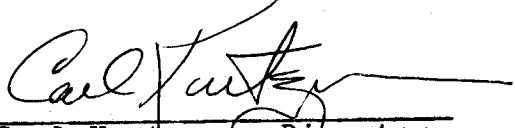
Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees 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 the 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 date of the election. A copy of the eligibility list shall be simultaneously filed with the Registered Professional Nursing Unit #1 and with Camden Council #10, New Jersey Civil Service 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 Registered Professional Nursing Unit #1, Camden Council #10, New Jersey Civil Service Association, or neither.

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

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: July 31, 1980
Trenton, New Jersey

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

In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS,

Public Employer,

-and-

REGISTERED PROFESSIONAL NURSING UNIT #1,

Docket No. RO-80-56

Petitioner,

-and-

CAMDEN COUNCIL NO. 10, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

A Commission Hearing Officer recommends that an election be directed to ascertain whether registered nurses desire to be represented by the petitioner or the intervenor in a negotiations unit. The employees sought by the petitioner are currently represented in a broad-based county-wide negotiations unit. The Hearing Officer considered Commission policy preferring broad-based negotiations units but found that the nurses had not been provided responsible representation and recommended therefore that the petitioner's unit be severed from the overall county-wide unit. The Hearing Officer also found the nurses shared a distinct community of interest and noted they were professional employees in a non-professional collective negotiations unit who had not been given their statutory right to decide whether they want to be included in a non-professional unit.

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.

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

In the Matter of

CAMDEN COUNTY BOARD OF CHOSEN FREEHOLDERS,

Public Employer,

-and-

REGISTERED PROFESSIONAL NURSING UNIT #1,

Docket No. RO-80-56

Petitioner,

-and-

CAMDEN COUNCIL NO. 10, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Vincent Paglione, Esq.
Assistant County Counsel

For the Petitioner
Tomar, Parks, Seliger, Simonoff & Adourian, Esqs.
(Mary L. Crangle, of Counsel)

For the Intervenor
Joseph A. Carmen, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On October 3, 1979, the Registered Professional Nursing Unit #1 ("RPNU" or "Petitioner") filed a timely petition supported by an adequate showing of interest with the Public Employment Relations Commission (the "Commission") seeking a certification as exclusive representative for negotiations of a unit of employees of the Camden County Board of Chosen Freeholders (the "County"). The Petitioner sought to represent a unit of all registered nurses employed at the Camden County Health Services Center at Lakeland. ^{1/}

^{1/} The Petitioner initially selected as the purpose of the petition "decertification of public employee representative" ("RD" petition) but crossed out the section of the decertification definition that stated "Petitioner does not
(continued)

The County took the position that it had no objection to the creation of a separate bargaining unit. Camden Council No. 10, New Jersey Civil Service Association ("Council No. 10") submitted a recently expired agreement with the public employer covering the employees involved and was permitted to intervene in the proceeding.

Pursuant to Notice of Hearing, hearings were held before the undersigned Hearing Officer on January 9 and January 21, 1980, in Trenton, New Jersey, at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. The County decided not to participate in the hearing, its position having previously been set out by letter to the Hearing Officer (A-5 in Evidence). Briefs were submitted by the RPNU and Council No. 10. ^{2/}

Upon the entire record herein, the Hearing Officer finds:

1. The County is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.
2. The RPNU and Council No. 10 are employee organizations within the meaning of the Act and are subject to its provisions.
3. A Petition for Certification of Public Employee Representative having been filed with the Commission, a question concerning representation exists and the matter is properly before the Hearing Officer for a Report and Recommendations.

1/ (continued) desire to have any representative." The statement accompanying this notice is that the represented employees seek to sever themselves from an existing unit for the purpose of seeking a separate representative. Since it was clear that the purpose of the petition was to allow the employees to exercise their statutory right to select an exclusive representative, the Commission assigned the matter an "RO" docket number and has considered the matter a certification of public employee representative petition. The Notice to Public Employees that was posted by the employer stated that a petition was filed seeking an election to determine whether the employees want to be represented for collective negotiations.

2/ Counsel for the RPNU requested that the brief submitted by counsel for Council No. 10 be rejected by the Hearing Officer since it was not submitted within one week after receipt of transcript and since a timely request to extend the time in which to file the brief was not made pursuant to N.J.S.A. 19:11-6.12(d) and

FINDINGS OF FACTBackground

Camden Council No. 10, New Jersey Civil Service Association (Council No. 10) is the majority representative of a broad-based County-wide unit of public employees employed by Camden County which currently includes the registered nurses who are petitioned for herein. ^{2/} Additionally, the registered nurses are members of the Registered Professional Nursing Unit #1 (the "RPNU"). Early in 1978 Council No. 10 agreed to allow the RPNU to become a local of Council No. 10 "under the umbrella" of Council No. 10. ^{4/} The nurses belong to Council No. 10 and have dues

^{2/} (continued) (e). Counsel for Council No. 10 argued in response that his brief was submitted within one week of receipt of transcript by him and that the transcript was received late because he was in a temporary office. In view of his explanation of the objection, I will accept his brief.

^{3/} In 1970 the Commission directed elections among certain voting groups of employees of Camden County. Elections were held and units were certified on August 26, 1970, that included (1) blue collar employees employed at the County's Lakeland Institutions (craft employees were allowed a craft option under the act and voted not to be included with non-craft employees and were certified in a separate unit) and (2) a residual county-wide blue collar and white collar unit of employees (excluding craft employees who were also given a craft option and voted not to be included and were also certified in a separate unit). All four units specifically excluded professional employees. Council No. 10 was certified as the majority representative of the (2) unit which apparently at some later point in time included the registered nurses at Lakeland in spite of the fact professionals were excluded from all units and they were not given a professional option and have never been given a professional option (Tr 1-27, 28). Licensed Professional Nurses at Lakeland Institutions had also been included in the Council No. 10 unit but in 1977 there was an agreement for a consent election for a separate unit for LPNs and the Licensed Practical Nurses Association of New Jersey was certified on March 7, 1977, as their majority representative.

^{4/} Transcript reference of January 9, 1980, will be Tr 1-(page) and of January 21, 1980, Tr 2-(page). (Tr 1-56) The nurses had filed a petition on September 9, 1977, for a separate collective negotiations unit severed from Council 10 (RO-78-43). During the processing of the petition the RPNU Local-Council 10 agreement was reached and the petition was withdrawn on August 15, 1978. The RPNU was formed in 1976 and there is evidence that Council 10 recognized the RPNU as a separate unit under Council 10 in 1976 (P-6 letter from the President of Council 10 to nurses advising the County recognized the RN's as a separate unit under Council 10; P-8 letter dated May 13, 1977, to Freeholder Director requesting to commence negotiations between the RPNU and the County and listing RPNU representatives and negotiating consultants).

deducted from their salaries pursuant to a dues check-off agreement in the collective negotiations agreement between the County and Council No. 10. The nurses pay their own dues directly to the RPNU.

Under the RPNU-Council No. 10 arrangement, the registered nurses were to be allowed to negotiate with the County on matters that were unique to the nurses and the results of the negotiations were to be incorporated in Council 10's overall contract (Tr 1-33). The nurses were to be represented by Council 10's attorney but were to hire their own professional negotiator (Tr 1-58). On October 3, 1979, the nurses again filed a petition with the Commission requesting that they be certified as the majority representative for all registered nurses for collective negotiations.

There are approximately 100 registered nurses ^{5/} employed at the Lakelands Health Services Center which includes a psychiatric facility, a general hospital for rehabilitation patients and chronically ill patients and a skilled nursing center. They are supervised by an Executive Director of Nursing and an Associate Executive Director of Nursing, who have total authority over the RN's. RN's never work outside the Health Services Center. There are also a small number of RN's who work at a drug and alcohol abuse center called Turning Point who are also being petitioned for herein.

Processing of Grievances

RPNU shop stewards usually present grievances at step two of the contractual grievance procedure to the hospital's Executive Director. Processing of grievances beyond the hospital level for disposition by the County requires Coun-

^{5/} The nurses are commonly referred to as registered nurses or RN's but their Civil Service titles are Graduate Nurse, Head Nurse, Assistant Supervisors of Nurses and Supervisors of Nurses.

cil No. 10 assistance apparently directly through the president Mildred DiFante. ^{6/}
 The RPNU's attempts to process grievances beyond the hospital level have been quite unsuccessful in spite of repeated attempts for Council No. 10 assistance. Mrs. DiFante rarely answers telephone calls and does not respond to letters (Tr 2-72 and P-11 in Evidence). ^{7/} RPNU #1 Vice President Mark Kunzinger, after having had a grievance pending for over a year and a half, and having contacted Council No. 10 many many times (Tr 2-74) went to Freeholder Sayers and made a personal plea and finally had his grievance resolved by Sayers.

The 1978 Negotiations

Under the agreement whereby the RPNU was to be a local of Council No. 10, contract negotiations commenced in May of 1978 in order to negotiate terms and conditions of employment relating specifically to the registered nurses, which matters were then to be incorporated in the Council 10 overall contract. The nurses were to negotiate their own concerns separate from Council 10's. ^{8/}

Negotiations sessions took place between the County and the RPNU-Council 10 Committee from May until November of 1978. The nurses were represented by a professional negotiator, a committee of nurses, the Council No. 10 attorney and the Council No. 10 president. The County was represented by the County Adminis-

^{6/} RPNU witnesses' testimony as to their grievance problems refer primarily to President DiFante as the union representative responsible. In one instance where a Council 10 vice president attempted to help RN's in grievances, the vice president was reprimanded by Mrs. DiFante for assisting RN's and prohibited from giving further assistance to RN's (Tr 2-63). Council 10 called no witnesses to refute this testimony and I conclude that Mrs. DiFante has the sole authority to process grievances.

^{7/} On cross-examination of the president of the RPNU, Anne Henkle, she recalled Council 10 representing nurses at a "reclassification hearing" in the spring of 1978 (Tr 1-47). As noted in n. 6 above, Council No. 10 called no witnesses at this hearing. Therefore, there was no evidence presented to refute the difficulties the RN's encountered in their dealings with Council No. 10.

^{8/} At a general membership meeting in May of 1978 for ratification of the Council 10 contract, the RPNU president, Ms. Henkle, was directed by Mrs. DiFante not to participate in the ratification vote because the contract did not pertain to the registered nurses who were still in negotiations (Tr 1-34).

istrator Ronald C. Kerins, his assistant and a representative of the hospital. Not all the same representatives attended all sessions on either side. At some time in November of 1978 the parties reached agreement on a contract which was to be typed by Mildred DiFante and the final document was to be approved by the parties. When it was presented to the nurses the typed contract differed materially and substantially from the agreement previously reached. The RPNU nurses attempted to meet with Mildred DiFante on several occasions but were unable to get her to meet with them. This ultimately led to a "job action" on the part of the nurses (Tr 2-7, 16). At that point in time the Executive Director of the Hospital, Dr. Urban, contacted the Director of the Board of Freeholders, Mr. Simon, who authorized Dr. Urban, together with Freeholder Edward W. Sayers, Chairman of the Freeholders' Hospital Committee, and Michael Shutman, Associate Director of Nursing, to negotiate directly with the RN's. They met with the RPNU president Anne Henkle and vice president Mark Kunzinger and again reached an agreement (Tr 2-16 and P-10 in Evidence). Council 10 did not participate in these negotiations. A contract was never signed and this was the subject of an unfair practice charge filed by the RPNU on August 20, 1979, against Council 10 and the County. ^{9/} On October 3, 1979, the instant petition to formally sever the RN's from the Council 10 was filed. ^{10/}

THE ISSUE

Should an election be directed in a unit of all registered nurses employed by the County of Camden at the Health Services Center, Lakeland, New Jersey, thereby severing these employees from the existing county-wide unit?

^{9/} A Commission Hearing Examiner has recommended among other things that the Commission order that the contract be reduced to writing and the matter is pending before the Commission (H.E. 80-36).

^{10/} Associate Director of Nursing Shutman testified that after the petition was filed, Mrs. DiFante threatened to remove the nurses from Council 10's contractual health and welfare benefits if they pursued the petition, since their contract was not settled. Under the health and welfare fund the County pays to Council 10 a specified amount for each Council 10 member (around \$100 in 1978 and in 1979) and Council 10 provides a benefit (dental clinic) to members of Council 10 only.

POSITIONS OF THE PARTIES

The public employer has no objection to the creation of a separate bargaining unit for the registered nurses (A-4 and A-5 in Evidence).

The Petitioner argues that the RN's should be severed from Council 10's unit because Council 10 has not provided responsible representation to the nurses as evidenced by their refusal to process grievances and by Council 10's behavior during the nurses' 1978 contract negotiations, and point to recommended findings of the Hearing Examiner for further evidence.

While the Petitioner acknowledges Commission policy favoring broad-based functional units, they argue that the nurses have actually been for many years a "separate and distinct unit" under Council 10 by local agreement which the Commission should not disrupt. They point out that the public employer does not feel that a formal severance would create fragmentation of county units. They also argue that the nurses do not share a community of interest with other Council 10 employees since they are the only professional medical personnel in the unit.

Council 10 argues that severance of the nurses would be fragmentation because their individual professional interests are not unique. They dispute arguments that they have not provided responsible representation.

DISCUSSION AND ANALYSIS

The Commission set forth the standards to be applied to petitions seeking severance of employees from an existing appropriate collective negotiations unit in 1971 and those standards remain unchanged. The Commission has a long-standing policy preferring broad-based units at the county level and in only limited circumstances will the Commission permit severance of employees from otherwise appropriate units. (In re County of Somerset, D.R. No. 78-42, 4 NJPER 198 (¶4099, 1978). In In re Jefferson Township Board of Education, P.E.R.C. No. 61 (1971) the Commission stated that it would not sever employees from an existing appropriate collective negotiations unit merely upon a claim that a community of interest

exists within a subgroup of employees in that unit in the absence of a showing that the existing relationship is unstable or that the incumbent organization has not provided responsible representation. (In the Matter of Mercer County Prosecutor, D.R. No. 79-18, 5 NJPER 60 (¶10039, 1979)).

While the undersigned is not convinced that the existing Council 10 unit which includes professional registered nurses is an appropriate unit under the Act, assuming arguendo it is, I do not find that the RPNU has been provided responsible representation, or that there has been a stable relationship between Council No. 10 and the RPNU. 11/

The RN's are professional employees with particular skills and training. They work at a distinct location and within their own nursing organizational structure. The licensed professional nurses who fall within the nursing organization structure are not in the unit represented by Council 10 but are in their own collective negotiations unit. They are professional employees in a non-professional collective negotiations unit who have never been given their statutory right to decide whether they want to be included in a non-professional unit.

The community of interest shared by the nurses, which is distinct from other employees in the unit, might not be sufficient to convince the undersigned to recommend severance under Commission standards were it not for the history of the relationship between the parties. This is not a stable relationship that should not be upset -- it is anything but stable.

The lack of responsible representation on the part of Council No. 10 was exemplified in their course of conduct during 1978 negotiations. While the RPNU

11/ N.J.S.A. 34:13A-6 provides that no collective negotiations "unit shall be appropriate which includes... (2) both professional and non-professional 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." Craft employees were given their statutory option in 1970 but the RN's, who are professional employees, were not and have not since been given their option. The undersigned therefore questions the appropriateness of this unit under the Act. While this factor has been considered in the community of interest discussions below, the severance recommendation is based on the lack of responsible representation and not the statutory inappropriateness of the unit.

was seemingly allowed to negotiate its own agreement, and not permitted any role in the overall Council No. 10 agreement, an RPNU-Council 10-County contract was never executed, even after agreement was reached and re-reached, because Council 10 refused to sign it. It appears that this contract will never be signed unless the Commission orders the signing as recommended by the Hearing Examiner in the unfair practice charge.

The nurses have encountered continuous problems and frustration with Council 10 in the processing of grievances. While the undersigned would not suggest that an employee has an absolute right to arbitration on grievances, an employee should be able to expect an exclusive majority representative to at least respond to their inquiries as to whether their grievances will be processed.

Council 10, the exclusive representative of the petitioned-for employees herein, has not provided responsible representation either in negotiations or with respect to grievance handling.

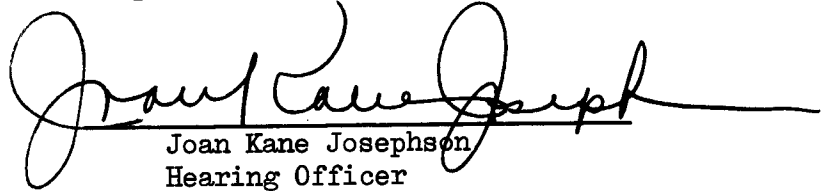
RPNU #1 has had a certain degree of autonomy from Council No. 10 since 1976 and the County has acquiesced in this relationship and has dealt with the nurses directly over the years. They have no objection to the formal creation of a separate unit for the RPNU. One of the concerns about fragmentation is that it imposes on the employer a duty to have a collective negotiations relationship with additional units; however, the County has already been dealing with the RPNU and is willing to continue to do so. A more harmonious relationship between the County and the RPNU will most likely exist with the RPNU as a separate unit out from under Council 10's umbrella.

RECOMMENDATION

Based on the above, the undersigned recommends therefore an election be conducted among all the registered nurses employed by the County of Camden at the

Camden County Health Services Center at Lakeland, New Jersey. Eligible voters shall vote whether or not they desire to be represented for the purposes of collective negotiations by either the Registered Professional Nursing Unit #1 or Camden Council No. 10, New Jersey Civil Service Association.

Respectfully submitted,



Joan Kane Josephson
Hearing Officer

DATED: May 9, 1980
Trenton, New Jersey