

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

LOCAL 518, NEW JERSEY STATE MOTOR
VEHICLES EMPLOYEES UNION, AFL-CIO
AND LOCAL 195, INTERNATIONAL
FEDERATION OF PROFESSIONAL AND
TECHNICAL ENGINEERS, AFL-CIO,

DOCKET NO. CU-76-13

Petitioner,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION/
NEW JERSEY STATE EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, adopting a Hearing Officer's Report and Recommendations substantially for the reasons set forth therein, clarifies the State Inspection and Security Unit as including employees employed in Environmental Technician titles and the title of Driver's License Examiner. The Director determines that the nature of the functions performed by these employees is consistent with the definitional scope of the Inspection and Security Unit, i.e., the involvement of employees in a law enforcement-type activity with respect to enforcing regulations concerning regulated industries or activities within the State. The Director finds, under the circumstances presented, that clarification of the Inspection and Security Unit is appropriate. As a result the employees will no longer be included in the Administrative and Clerical Unit.

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NEW JERSEY CIVIL SERVICE ASSOCIATION/
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Intervenor.

Appearances:

For the Public Employer
Honorable John J. Degnan, Attorney General
(Melvin E. Mounts, Deputy Attorney General, of Counsel)

For the Petitioner
Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, of Counsel)

For the Intervenor
Fox & Fox, Esqs.
(Richard H. Greenstein, of Counsel)

DECISION

Pursuant to Petitions for Clarification of Unit filed
by the New Jersey Civil Service Association/New Jersey State

Employees Association (the "Association") and Local 518, New Jersey State Motor Vehicles Employees Union, AFL-CIO and Local 195, International Federation of Professional and Technical Engineers, AFL-CIO (the "Locals"), and pursuant to a Notice of Hearing to resolve these questions concerning the composition of collective negotiations units comprised of certain employees of the State of New Jersey (the "State"), a hearing was held on September 30, 1977, June 13, 1978 and June 14, 1978, before a Commission Hearing Officer ^{1/} at which all parties were afforded an opportunity to present evidence, to examine and to cross-examine witnesses and to argue orally.

During the course of the hearings, the parties reached an agreement as to the appropriate unit placement of certain titles which are no longer in dispute herein. ^{2/} Accordingly, the Hearing Officer took evidence with respect to the remaining disputed titles, Environmental Technician (Including: Assistant Environmental Technician, Environmental Technician and Senior Environmental Technician) and Driver's License Examiner. At the close of hearing, all parties submitted letter memoranda to the Hearing Officer in lieu of briefs. Subsequently, the Hearing Officer issued her Report and Recommendations on May 18, 1979, which Report is attached hereto and made a part hereof. Exceptions to the Hearing Officers' Report

1/ Due to the unavailability of the originally designated Hearing Officer to complete the hearing, the instant matters were transferred to Commission Hearing Officer Joan Kane Josephson.

2/ As a result of these agreements, the issues raised in Docket No. CU-76-11, which was originally consolidated with the instant matter, need not be considered.

were filed on June 11, 1979, by the Association. Neither the State, nor the Locals filed exceptions to the Report, nor have they filed any answering briefs with respect to the Association's exceptions.

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

1. The State of New Jersey 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 involved in the Petitions, and is subject to the provisions of the Act.

2. The New Jersey Civil Service Association/New Jersey State Employees Association, and Local 518, New Jersey State Motor Vehicles Employees Union, AFL-CIO and Local 195, International Federation of Professional and Technical Engineers, AFL-CIO are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Association is the majority representative of employees comprising the Administrative and Clerical negotiations unit. The Locals jointly represent employees comprising the Inspection and Security negotiations unit. The Locals claim that Environmental Technicians and Driver's License Examiners, who are currently included in the Administrative and Clerical Unit,

should be placed in the Inspection and Security Unit. Accordingly, a Clarification of Unit Petition having been filed, and there existing a question concerning the composition of a collective negotiations unit, the instant matter is appropriately before the undersigned for determination.

4. The Hearing Officer recommended that the Inspection and Security unit should be clarified as including the Environmental Technician titles and the Driver's License Examiner title. The Hearing Officer found that Environmental Technicians monitor and inspect the environmental quality of New Jersey's air, water and land, and may recommend prosecution of violators of various environmental laws and regulations. In addition, the Hearing Officer found that Driver's License Examiners primarily administer the road test portion of the driver's license examination. Successful completion of the road test results in the licensing of an applicant to operate a motor vehicle. Additionally, the Hearing Officer found that, prior to administering the road test, the Driver's License Examiner performs a safety check of the vehicle which an applicant will use. Finally, the Hearing Officer compared the functions of the employees in the above titles with the functions of other personnel included in the Inspection and Security Unit, the Administrative and Clerical Unit, and the State Professional Unit. After analyzing the above factors, the Hearing Officer concluded that Environmental Technicians and Driver's License Examiners share a community of interest with employees in the Inspection and Security Unit, and that the titles are appropriately identified

within the definitional scope of the Inspection and Security Unit. This definition, presented by the State, and concurred with by the Hearing Officer, 3/is:

The essence of the Inspection and Security Unit is the element of law enforcement, that is, that it is a collection of employees who are dealing regularly with regulated industries or activities and are insuring that the appropriate laws and rules and regulations covering those activities for industries are being enforced.

5. The Association, in its exceptions to the Hearing Officer's findings, contends that the evidence adduced at the hearing demonstrates that Environmental Technicians perform job functions which are consistent with those of other employees in the Administrative and Clerical Unit or, in the alternative, with employees in the Professional Unit which the Association also represents. In support of this assertion, the Association cites testimony which indicates that Environmental Technicians gather data, use sophisticated scientific equipment, make difficult judgmental conclusions and generally perform functions of a scientific or quasi-scientific nature. It is argued that their duties are similar to those of Building Inspector-Health Facilities, or Industrial Hygienist, or an Investigator II, which titles are contained in the Professional Unit. In support of its contention that Driver's License Examiners should remain in the Administrative and Clerical Unit, the Association argues that they do

3/ Neither the Association nor the Locals has disputed this definition.

not wear uniforms, they administer the written and visual tests as well as the driving test and have the same work schedule as other clericals in the driver qualification centers.

6. Having reviewed the entire record, the Hearing Officer's Report and Recommendations, and the exceptions filed thereto, the undersigned finds that there is ample evidence to support the Hearing Officer's findings and conclusions, and these are specifically adopted.

Although the Association contends that the Environmental Technician titles should either remain in the Administrative and Clerical Unit or be placed in the Professional Unit, the thrust of its argument appears to be directed at the latter alternative. Thus, the Association maintains that the functions which Environmental Technicians perform: the collection of data, the utilization of scientific equipment and the making of difficult scientific judgments are comparable to those functions performed by employees in the Professional Unit. However, as the Hearing Officer notes, the duties of the Environmental Technicians involve technical expertise and do not require knowledge of an advanced type ordinarily acquired by professional employees through specialized study in an institution of higher learning or comparable experience. The Association placed in evidence thirteen Civil Service job descriptions for titles currently included in the Professional Unit. All require a college degree except one which require six years of experience in the field which could be substituted on a year-for-year

basis with college education. On the other hand, the job description for the title of Environmental Technician requires only "one year of experience in work including transportation related air, noise, or water pollution control studies." Twenty-two (22) semester hours in a variety of technical subjects, enumerated in the job description may be substituted for such experience.

Despite the Association's alternative assertion that the Environmental Technician title should remain in the Administrative and Clerical Unit, the Association's description of the duties of the Environmental Technician titles reinforces the conclusion that the Environmental Technicians are identifiable within the Inspection and Security Unit. Environmental Technicians, who use "sophisticated scientific equipment," who "complete complex scientific reports" and who "make difficult judgmental conclusions" associated with their pollution inspection are utilized to assure the compliance with State and Federal environmental laws, rules and regulations, consistent with the definitional scope of the Inspection and Security Unit.

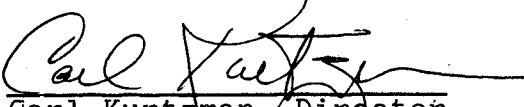
Moreover, the undersigned also finds the Association's exceptions to the Hearing Officer's findings concerning the title of Driver's License Examiner to be without merit. Although Driver's License Examiners do not wear uniforms as do Motor Vehicle Examiners, and have different working hours, these factors are not necessarily dispositive. The fact that Driver's License Examiners perform

a preliminary safety check of the vehicle to be used by a driver's license applicant and the fact that they are responsible for "inspecting" and certifying the proficiency of such applicant before approving the issuance of a license are of greater import and must be given considerable weight. While Driver's License Examiners may perform some strictly clerical functions, such duties do not constitute the primary nature of their job. Additionally, performance of the Driver's License Examiners duties requires the exercise of considerable discretion in the administration of the road test. The element of discretion in the exercise of enforcing a regulatory procedure concerning a matter of public safety licensure makes the Driver's License Examiner particularly suited for inclusion in the Inspection and Security "law enforcement" type unit. Accordingly, the undersigned finds that the Driver's License Examiner title is identified within the definitional scope of the Inspection and Security Unit.

Clarification of the Inspection and Security Unit as including the Environmental Technicians and Driver's License Examiner titles is appropriate under the circumstances presented. Although the titles were not included in the Inspection and Security Unit when formed, the Locals' petition was filed shortly after the conclusion of the first contractual agreement between the Locals and the State. In addition, the Locals promptly sought to clarify

the composition of their unit shortly after the placement of these titles in another unit. Such clarification is effective immediately upon the issuance of this determination.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: September 28, 1979
Trenton, New Jersey