

E.D. NO. 76-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY PUBLIC
BROADCASTING AUTHORITY,
Public Employer,

-and-

RADIO AND TELEVISION BROADCAST
ENGINEERS UNION, LOCAL 1212,
IBEW,

Petitioner,

Docket No. RO-809

-and-

INTERNATIONAL FEDERATION OF PRO-
FESSIONAL AND TECHNICAL ENGINEERS,
AFL-CIO,

Intervenor,

-and-

NEW JERSEY STATE EMPLOYEES ASSO-
CIATION-NEW JERSEY CIVIL SERVICE
ASSOCIATION,

Intervenor.

SYNOPSIS

The Executive Director, in accordance with the recommendations of a Hearing Officer and in the absence of exceptions to the Hearing Officer's Report and Recommendations, dismisses a petition wherein the Petitioner is seeking to represent a narrow unit of technical and professional employees employed by the State of New Jersey Public Broadcasting Authority. He relies upon the principles enunciated in State of New Jersey, et al, P.E.R.C. No. 50 (1971), in which the Commission adopted the requirement that units of State employees must be statewide in scope and must group broad occupational and functional categories of employees.

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DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain public employees of the State of New Jersey Public Broadcasting Authority, a hearing was held on March 24, 1975, before Hearing Officer Leo M. Rose, at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. Thereafter, on August 5, 1975 the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto and made a part hereof. Exceptions were not filed to the Hearing Officer's Report and Recommendations. The undersigned has carefully

considered the entire record and the Hearing Officer's Report and Recommendations and, on the basis of the facts in this case, finds:

1. The State of New Jersey Public Broadcasting Authority is a Public Employer within the meaning of the Act and is subject to its provisions.

2. The Radio and Television Broadcast Engineers Union, Local 1212, I.B.E.W., ("Local 1212") the International Federation of Professional and Technical Engineers, AFL-CIO, ("IFPTE") and the New Jersey State Employees Association-New Jersey Civil Service Association ("NJSEA-NJCSA") are employee representatives within the meaning of the Act and are subject to its provisions.

3. A Petition for Certification of Public Employee Representative was filed by Local 1212 seeking to represent certain public employees. The Public Employer declined to consent to an election in the unit sought by the Petitioner or to recognize the Petitioner in the unit sought. Therefore, there is a question concerning representation of public employees and the matter is properly before the undersigned for decision.

4. The petition in the instant matter was filed on May 6, 1974 and, as originally worded, the unit description therein reflected the designations generally accepted in the television broadcast industry for the categorization of technical personnel. The original unit description was as follows: video operators, video recorders, cameramen, audiomen, boom men, utility men, film editors, video editors, tape editors, maintenance men, telicine men and sound effects men.

The Public Employer indicated that it did not utilize these traditional designations to categorize the persons who performed the various functions as set forth in Petitioner's original unit description. The Public Employer indicated that it used the titles of Television Technician I and Television Technician II to describe most of these functions. The Public Employer further indicated that it had a separate category, Television Transmitter Engineer, for licensed personnel who operated television transmitters, and another separate category, Film Editor, just for film editors. Thereafter, Petitioner amended the unit description in the instant petition to include the following titles of the Public Employer: Television Technician I, Television Technician II, and Television Transmitter Engineer.

5. The Petitioner contends that the unit petitioned for is appropriate because the skills of the employees and the services which they render are entirely distinct from the skills required of and the services rendered by any other employees working for the State of New Jersey.

The Public Employer claims that the State of New Jersey Public Broadcasting Authority (P.B.A.) is an arm of the executive branch of the State government and is not an autonomous agency such as the New Jersey Turnpike Authority. The parties stipulated that the correct name of the Public Employer was the State of New Jersey Public Broadcasting Authority. Thus, it is asserted that the employees of the P.B.A. are State employees. The Public

Employer points out that the unit sought by the Petitioner is a very narrow unit encompassing only one certain group of employees in one State agency. Because these employees are State employees, the Public Employer as well as the two Intervenors contend an appropriate unit must be one which is statewide in scope. See State of New Jersey, et al, P.E.R.C. No. 50 (1971).

The Intervenors both contend that the employees sought by the Petitioner are either craft or professional employees and, as such, that they either are now included in the Craft unit represented by IFPTE or will be included in the statewide Professional unit then in the process of selecting a majority representative. The NJSEA-NJCSA has now been certified as the majority representative in that unit.

IFPTE also argues that although Petitioner focused upon the distinctive nature of the work done by the employees in the unit sought, the work performed by these employees was no more unique than that performed by other specialized titles which occur elsewhere in State employment.

6. The Hearing Officer found that the unit proposed by the Petitioner was not appropriate for collective negotiations and therefore recommended dismissal of the petition. The undersigned agrees with the findings of fact and recommendations of the Hearing Officer that the unit sought is not appropriate.

In previous decisions, the Commission has clearly endorsed the principle that units of State employees must be

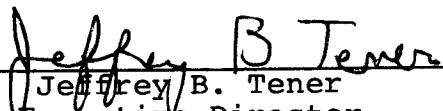
statewide in scope and that such units must group broad occupational and functional categories of employees. See P.E.R.C. No. 50, supra. The unique nature of the service provided by certain employees will not suffice to overcome the maxim that an appropriate unit for State employees must be statewide in scope and include a broad occupational and functional grouping of titles. While the Commission has previously considered the arguments in favor of establishing units at the institutional or departmental levels, the Commission has rejected such arguments, instead giving controlling consideration to the factors associated with a broader community of interest.

In the instant matter, a number of employees of the P.B.A. are already being represented as members of existing statewide units: Utility Man PBA, Studio Carpenter PBA, and Electrician/Stage Hand PBA are three titles specifically included in the agreement between the State of New Jersey and Local 195, IFPTE (Exhibit I-1A in evidence). Other P.B.A. employees, including some of those petitioned for here, have been allocated to other Statewide units as well.

The record supports the findings of fact and conclusions of the Hearing Officer and in the absence of Exceptions to the Hearing Officer's Report and Recommendations, the undersigned adopts the findings of fact and conclusions of the Hearing Officer regarding the appropriateness of the unit sought by Petitioner.

Accordingly, having found the unit sought by the
Petitioner to be inappropriate, the instant petition is hereby
dismissed.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
February 26, 1976

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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UNION, LOCAL 1212, I.B.E.W.

Petitioner

-and-

INTERNATIONAL FEDERATION OF PROFESSIONAL
AND TECHNICAL EMPLOYEES, AFL/CIO

Intervenor I

-and-

NEW JERSEY STATE EMPLOYEES ASSOCIATION
NEW JERSEY CIVIL SERVICE ASSOCIATION

Intervenor II

APPEARANCES:

For the Public Employer:

Melvin E. Mounts, Esquire
Deputy Attorney General

Robert Clearfield, Esquire
Office of Employee Relations

Lawrence Frynire, Executive Director-Secretary
Public Broadcasting Authority

William King, Associate Executive Director
Public Broadcasting Authority

John Wilner, Director of Engineering
Public Broadcasting Authority

APPEARANCES (CONTINUED):

For the Petitioner:

David I. Ashe, Esquire
Attorney for Petitioner

Vincent D. Bartilucci, Business Manager
Local 1212, I.B.E.W., Radio and Television
Broadcast Engineers

For Intervenor I:

Sanford R. Oxfeld, Esquire
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International Fed. of Professional
and Technical Employees

Robert R. Turner, President
Local 195, International Federation of
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Donald Philippi, Business Manager
Local 195, International Federation of
Professional and Technical Employees

For Intervenor II:

Randall A. Flager
New Jersey State Employees Association

Edgar Samman, Director
New Jersey State Employees Association

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A hearing was held pursuant to Notice of Hearing dated January 15, 1975, and Order Rescheduling Hearing dated January 29, 1975, before the undersigned Hearing Officer of the Public Employment Relations Commission (hereinafter "Commission"). A petition was filed by Radio and Television Broadcast Engineers Union, Local 1212 I.B.E.W. (hereinafter "Petitioner") on May 6, 1974. All parties were given full opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Subsequently, briefs were filed by both parties.

Upon the entire record in this proceeding (Transcript of hearing, exhibits in evidence, post-hearing briefs) the Hearing Officer finds:

1. The State of New Jersey Public Broadcasting Authority is a public employer within the meaning of the Act and is subject to the provisions thereof.
2. Local 1212, I.B.E.W. requested recognition in a unit of video operators, video recorders, cameramen, audio men, "boom men", sound effects men, utility men, film, video and audio tape editors, maintenance men. Said recognition request was made on August 14, 1974. (Job titles were later changed by motion of Petitioner's counsel, said motion being renewed in his brief, to titles consistent with New Jersey State practice, not that of the radio and television industry. Said motion is hereby granted.)
3. The Public Employer declined said request for recognition. There is a question concerning representation and the matter is appropriately before the Hearing Officer for Report and Recommendations.

Statement of Facts

New Jersey Public Broadcasting Authority (hereinafter "Authority") was created by act of the Legislature in 1968 (L. of 1968, Chapter 404), to include "all aspects of non-commercial radio and television, open and closed circuit, including the production and dissemination of public and community affairs, educational, cultural and instructional information to the public at large within the State." (N.J.A.C. 48:23-2). The Authority, headquartered in Trenton, operates four transmitters elsewhere. (Tr. p. 38, 1.9). There is a staff of 30 technical employees (Petition), more or less. On August 15, 1974, Petitioner

requested recognition as the exclusive negotiating representative for the employees in the requested unit. There was no formal response to said request (Tr. p. 12, l. 13), whereupon Petitioner filed the within petition with the Commission.

The Authority, represented by the Office of Employee Relations, counsel from the Attorney General's staff and the top administration of the Authority, claimed that the Authority was an arm of the Executive Branch. (Tr. p. 21, l. 21). In effect, this allegedly meant that the budget of the Authority is submitted to the State of New Jersey, just as other State agencies and that the general personnel policies of the State are in effect, rather than a self-regulating system, such as is true of the Turnpike Authority.

During the course of the hearing, the parties joined in a stipulation that the correct name of the public employer is "State of New Jersey Public Broadcasting Authority" (Tr. p. 9, l. 22).

Counsel for Petitioner argued that the kind of service rendered by the members of the sought unit (i.e., telecasting, with the appurtanent skills involved) created a unit with no community of interest with other State employees, a sui generis unit composed of holders of various craft and professional skills that the technical skills involved created a "unique" unit. He further argued for the same treatment as that accorded the television industry by the National Labor Relations Board, namely the inclusion of technicians and editors in the same unit, even though editors may be considered as professionals (Tr. p. 62, l. 4). Counsel for the State of New Jersey objected to strict adherence to N.L.R.B. precedent, distinguishing Lullo: "The canons that apply to unit organization are quite different

from the Lullo case" (Tr. p. 63, l. 10). Reference is to Lullo v. International Association of Fire Fighters, Local 1066, 55 N.J. 409 (1970).

In addition to the question concerning appropriateness of the unit requested, there were also separate claims of contract bar (Tr. p. 13, l. 17), in that some of the titles in the unit sought were already included in an agreement between the State of New Jersey and Local 195, I.F.P.T.E., AFL-CIO (Exhibit I-1A) and others were included in the Notice of Election in the Professional Unit, said election being held by mail. Ballots were due in the Commission office in Trenton on December 9, 1974 (Exhibit ER-A). An examination of the above-mentioned exhibits shows the following titles included:

1. Operations, Maintenance, Service and Crafts unit:

Electrician/Stage Hand, P.B.A.
Studio Carpenter, P.B.A.
Utility Man, P.B.A.

2. Professional unit:

Assistant Film Editor, P.B.A.
Film Editor, P.B.A.
Instructional Television Utilization Specialist, P.B.A.
Naturalist, News Editor, P.B.A.
Public Broadcasting Announcer, P.B.A.
Public Broadcasting Writer, P.B.A.
Senior Film Editor, P.B.A.
Senior Television Writer, P.B.A.
Transmitter Engineer Trainee, P.B.A.*

No reference can be found to the titles of Television Technician I and II, nor to Television Transmitter Engineer, although Intervenor II claimed that similar titles (presumably carrying the same purport) were included in the petition for the Professional Unit, e.g., "Transmitter Engineer" and

*The Professional Unit election referred to resulted inconclusively, but a run-off was held on June 2, 1975, which was won by N.J.S.E.A./N.J.C.S.A.

"Television Engineer". (Tr. p. 89, l. 6). In any event, it seems obvious that Petitioner, in filing his petition, named the functions to be performed, rather than adhering to technical, personnel-oriented job titles. This appears in testimony of Petitioner that "flexibility" is a sine qua non in all phases of broadcasting and that "inter-changeability" is characteristic of the industry. (Tr. p. 53, l. 18). In other words, Petitioner used the assignments to which the necessities of the situation would dictate a person would perform at a time, without necessarily intending to mean a job title.

In this connection, it may be well here to inspect licensing, as required by the Federal Communications Commission (hereinafter "F.C.C."). Testimony of Business Manager of Petitioner reads as follows:

"Thirteen have first-class licenses and all but one have a second-class license, and that one is studying for it." (Tr. p. 48, l. 5 et seq.)

Later, the testimony of the Director of Engineering, P.B.A., clarifies the matter of licensing further,

"Television Technician I requires a first-class license and...must have the experience in one or more of the working areas. Television Technician II has to have an interest in broadcasting and doesn't have to have as extensive experience as Television Technician I and requires a second-class license."

In the cited response is a strong implication that licensure and experience are the prerequisites for Technician I, and that a lesser license and less practical experience qualify for Technician II.

The licensing requirements as set forth by the Petitioner's Business Manager are ("...he went to a college to study electrical engineering or...he went to a technical school. ...If you went to school 7 full time, it was two years. And if you went in the evening, it was four years...") (Tr. p. 7, l. 14 et seq.).

As for the Transmitter Engineers, mentioned during the hearing, first as an omission in the petition (Tr. p. 67, l. 10), but mentioned as being in the Professional Unit (as "Trainee"), contrary to a claim advanced by Intervenor II the undersigned has been unable to find the titles of "Transmitter Engineer" or "Television Engineer" in the original petition in the Professional matter, as was asserted in support of said claim (Tr. p. 89, l. 6).

A further examination of the titles listed in the Professional election shows those already cited, as well as those included in the Operations, Maintenance and Services, and Crafts unit, covered by Intervenor I's agreement dated May 15, 1972. In support of his contention, that all titles in the Public Broadcasting Authority have been allocated to existing units, counsel for the State of New Jersey asserted that Television Technician titles have been allocated to the craft unit by mutual agreement of the parties. (Tr. p. 70, l. 2).

(It is on this basis that both Intervenor were accorded intervenor standing, namely the protection of existing units or of proposed units in the process of mail balloting. Therefore, the intervenor standing was limited to resisting a "carve-out".)

Counsel for the State relied on doctrine contained in previous Commission decisions, PERC 50 and PERC 68. The latter, a consolidation of five matters with a common problem of appropriateness of units, is familiarly called the "nurses case" and was referred to by that designation during the hearing. The thrust of this decision is that, "Given the policy consideration of this statute,^{*} the Commission

*i.e., Chapter 303, Laws of 1968.

believes that the characteristics of a particular profession should not be a determinant in establishing units for negotiations. If community of interest is equated with and limited to such characteristics, the stability and harmony which this Act was designed to promote are in jeopardy."

Earlier, in PERC 50, aforementioned, the Commission concluded, "These petitions seek units less than State-wide in scope and which are only segments of the units found appropriate here. As a result of these proceedings, such units are inappropriate on their face and petitions for them are subject to dismissal without hearing." (emphasis added).

Furthermore, although the Commission in 1969 found each of the six state colleges to constitute an appropriate unit (PERC 1), that finding was reversed in 1972 (PERC 72), so that all of the state colleges were found to be a single unit. Said reversal was made after notice was taken of a Superior Court decision* finding the Governor to be the "public employer" of employees at the state colleges supervised by the Board of Higher Education. Therefore, it seems safe to conclude that in any matter in which the State of New Jersey is found to be the public employer, a State-wide unit will be required. The "big unit" approach may seem to work a deprivation on some groups of employees, but as the Commission stated in PERC 68, "Potentially, every recognized professional group would be segregated, presenting the Employer with multiplicity of units and the likelihood of attendant problems of competing demands, whipsawing, and continuous negotiations which, disregarding the Employer's inconvenience, are not judged to be in the public interest. Fragmentation to that degree cannot be justified..."

Counsel for petitioner argued that the technicians concerned

*Assn. of N. J. State College Faculties v. Board of Higher Education, 112 N.J. Super 237 (Law Div., 1970).

herein were part and parcel of the television industry, the only difference being that the employer is the State of New Jersey. Therefore, he reasoned, both at hearing and in his brief, that their place is properly with their fellows in the industry at large, as opposed to the State's contention that the technicians were already allocated to existing units (or potential, in the case of the Professional Unit) and that the parties (i.e., the State and Intervenor I) had mutually placed television technicians in the Craft Unit. The letter of October 25, 1974, from Stephen B. Hunter confirms that certain Commission employees were allocated to other units, existing and petitioned for.

In the light of the foregoing discussion, it seems clear that some employees of the Commission are already represented in existing units, that some have been allocated to proposed and agreed units.

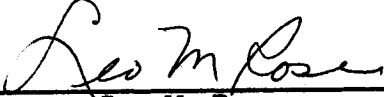
The argument of uniqueness of service has been advanced by nearly all litigants in State-wide unit determinations so far reviewed by PERC, and all fell before the reasoning that "...a high degree of centralization in the top echelon of State government and a general uniformity of major terms and conditions of employment for State employees-- required a finding that the first distinctive level of common interest among employees extended State-wide and that this was the minimum level for meaningful negotiation of terms and conditions of employment*. Later, in the same decision, the death blow to localized carve-out, such as is considered herein, "...it was appropriate to fashion a unit, State-wide in scope, to encompass all employees sharing a broad occupational objective or description. That is, it found an additional mutuality of employee interest arising from the kind of work performed, not expressed

*PERC NO. 68.

in terms of job titles or functions, but in terms of the nature of the service provided." Later in the same decision, "The Commission is now asked to find appropriate several units whose composition would conform to certain individual professions. To do so would require the Commission to recognize as controlling the common attributes and bonds which distinguish a particular profession, be it teaching, nursing, counseling, etc., and find therein the necessary regard for community of interest. The commission views that concept in much broader perspective in these cases."

Thus, doctrine has been set, and at the risk of being repetitious, it is apparent that a State-wide unit is viewed by the Public Employment Relations Commission as the only viable unit within a given generalized category. Thus, the creation of Health, Care and Rehabilitation Services; Operation, Maintenance and Services; and Crafts units. Later came the Administrative, Supervisory and Professional units. Within the broad reaches of the units as erected, all job titles in the State may be placed, using the criteria adopted by the Commission and set forth, albeit skeletally, above. Therefore, the undersigned has no alternative in the fully-ripened development of State units to now find the petitioned-for unit inappropriate. The job titles fit too patly in the existing units and surely are no more sui generis than many of the more exotic job titles employed by the State in occupations of service, crafts or professions, when viewed broadly. Moreover, the presence of titles in existing units is highly persuasive, even though the undersigned believes that affected employees are entitled to be informed concerning such an important decision as their placement in a given unit.

Therefore, for the reasons set forth above, the undersigned recommends that the petition in this matter be dismissed as proposing an inappropriate unit.



Leo M. Rose
Hearing Officer

Dated: August 5, 1975
Trenton, New Jersey