

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

In the Matter of

NEW JERSEY STATE COLLEGE OF
MEDICINE AND DENTISTRY,

Public Employer,

-and-

Docket No. RO-76-9

NEW JERSEY SOCIETY OF HOSPITAL
PHARMACISTS,

Petitioner.

SYNOPSIS

The Director of Representation Proceedings, affirming a Hearing Officer's Report and Recommendations, dismisses a Petition seeking the establishment of a unit limited to pharmacists at the New Jersey State College of Medicine and Dentistry. The Director determines that the proposed unit is inappropriate in the context of a large number of unrepresented professional employees employed by the College. Although Faculty and Housestaff units comprised of professional employees already exist at the College, these units constitute sound and coherent groupings of employees warranting separate representation. The record does not establish that pharmacists have such unique interest as to warrant representation apart from the remaining professional employees of the College. Thus, the Director rejects the Petitioner's arguments that the formation of the Faculty and Housestaff units opened the door to the allowance of Petitioner's suggested separate unit of pharmacists. Also rejected is the argument that the Hearing Officer improperly considered the potentiality of fragmented employee units at the College in the absence of a factual record demonstrating organization of employees along occupational lines. In this latter regard, the Director determines that the concern for a potential proliferation of units among the remaining unrepresented College employees, even in the absence of such actual organization, is a necessary consideration in the Commission's determination of an appropriate unit.

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PHARMACISTS,

Petitioner.

Appearances:

For the Public Employer, William F. Hyland, Esq.
Attorney General of New Jersey
By: Guy S. Michael

For the Petitioner, Harper, McCoy & O'Brien, Esqs.
By: John J. Harper, Esq.

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of public employees, a hearing was held on February 10, March 10 and 11, 1976, before Hearing Officer Leo M. Rose, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. Post-hearing briefs were filed by both the Petitioner and the Public Employer.

Thereafter, on July 28, 1976, the Hearing Officer issued his Report and Recommendations (H.O. No. 77-2), a copy of which is attached hereto and made a part hereof. On August 18, 1976, the Public Employer, New Jersey State College of Medicine and Dentistry, filed limited exceptions to the Hearing Officer's Report and Recommendations, and on August 20, 1976, the Petitioner, New Jersey Society of Hospital Pharmacists, filed its exceptions to the Hearing Officer's Report and Recommendations.

Thereafter, on August 27, 1976, the Public Employer filed its response to the Petitioner's exceptions and supporting brief. The undersigned has carefully considered the entire record in the proceeding including the Hearing Officer's Report and Recommendations and the exceptions, and on the facts in this case finds and determines as follows:

1. The New Jersey State College of Medicine and Dentistry (hereinafter the "College") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1.1 et seq., as amended, and is subject to its provisions.*

2. The New Jersey Society of Hospital Pharmacists (the "Society") is an employee representative within the meaning of the Act and is subject to its provisions.

3. A Request for recognition was made by the Society on June 30, 1975, and although the College itself did not reply, the State Office of Employee Relations advised the Society to file with this Commission. Thereafter, on July 14, 1975, a Petition for Certification of Public Employee Representative, supported by a valid showing of interest, was filed by the Society.

4. The Society seeks to represent a unit of 18 full-time and part-time pharmacists including staff pharmacists, chief pharmacists, and a supervisor of pharmaceutical services, who are employed by the College at the College's three facilities: Martland Hospital (Newark), Raritan Valley Hospital (Green Brook), and Rutgers Medical School, Institute of Mental Health Science (Piscataway).

5. The College objects to the proposed unit as being inappropriate, and argues that the appropriate unit would be a broad-based unit

* The State in its exceptions to the Hearing Officer's Report acknowledges the public employer status of the College, but states in clarification of its position that "The State agrees that the College is a public employer but only to the extent that it comprises a constituent part of the State Department of Higher Education within the Executive Branch of State government." The undersigned need not examine this position for purposes of the instant determination.

of professionals which would include pharmacists as well as many other professional titles. Moreover, the College objects to the inclusion of supervisory titles and to the inclusion of part-time employees in the proposed unit.

6. Accordingly, a valid petition for certification of public employee representative having been filed, and there existing a dispute as to the appropriateness of the proposed unit, the matter is appropriately before the undersigned for determination.

The Hearing Officer considered three major issues in this matter. First, the threshold question, is a "college-wide" unit of pharmacists the most appropriate collective negotiations unit within the factual context of this case? Second, assuming the proposed unit is found to be appropriate, are certain titles proposed to be included in the unit actually supervisors within the meaning of the Act? Third, also assuming the proposed unit is found to be appropriate, should certain part-time employees be included in the unit?

The Hearing Officer recommended that the proposed unit was inappropriate because the approval of the instant petition could lead to a proliferation of units among professionals. He further found that the chief pharmacists and the supervisor of pharmaceutical services are supervisors within the meaning of the Act and thus barred from any but a supervisors unit. Finally, he found that the part-time employees should be included in the proposed unit, should the petition eventually be approved.

The Society first excepts to the Hearing Officer's finding that only a college-wide unit of professional employees was appropriate. The Society argues that the Hearing Officer was only speculating that the proposed unit would cause fragmentation in the negotiations process,^{1/} and

^{1/} The Society argues that there are already five units represented various employees at the College; nevertheless, this "fragmentation" (continued)

that the Hearing Officer had failed to find a sufficient passage of time with no movement toward the organizing of a broad-based professional unit.^{2/} The Society's second exception is taken to that part of the Hearing Officer's Report wherein he allegedly failed to find that the proposed unit had a requisite community of interest. Lastly, the Society excepts to the Hearing Officer's Report wherein he found that the employees in titles of chief pharmacist and supervisor of pharmaceutical services were supervisors within the meaning of the Act and thereby excluded from the proposed unit, should the same be found appropriate.

The College excepted only to that portion of the Hearing Officer's Report wherein he found that part-time pharmacists should be included in the proposed unit if the unit is found to be appropriate. The College argues that there is insufficient community of interest between full and part time employees, but also argues in the alternative that if a community of interest does exist between them, that only those part-

1/ (Continued)

has not caused any undue problems in the bargaining process. Accordingly, it submits that the addition of one more unit, the proposed unit of pharmacists, will not unduly tax the negotiations process. Moreover, the Petitioner argues that there is insufficient evidence to establish that the approval of the proposed unit will lead to a proliferation of units among professionals.

The five existing units at the Colleges are:

1. LPN's, clerical, health care, blue collar.
2. full-time teaching and resident faculty.
3. all craft employees.
4. Physicians and dentists, interns, residents, and fellows, excluding teaching and resident faculty and part-time faculty.
5. Security guards and security officers.

2/ The Society relies upon In re State of New Jersey and Prof. Assoc. of N.J. Dept. of Ed., 64 N.J. 231 (1974), wherein the Supreme Court found a broad-based unit of professional State employees to be the most appropriate unit and dismissed petitions on behalf of occupational and disciplinary lines of professional employee organizations, but wherein the Court also prescribed:

"If, after rendition of our determination herein, there continues for a substantial period to be no movement in that direction, it will be open to any interested organization or group of professional employees to lay the matter of appropriate units before the Commission anew." At p. 253.

time employees working twenty hours or more should be included in the unit.

After a review of the entire record, including all of the briefs and exceptions, the undersigned adopts the Hearing Officer's Report and Recommendations based on the following analysis.

First, the Society argues that it was improper for the Hearing Officer to speculate about the potentiality for fragmented units of professional employees in the absence of a factual record to demonstrate that the professionals, other than pharmacists, were moving in the direction of organizing along separate occupational lines. The undersigned does not agree. The potentiality for fragmentation was an appropriate and, indeed, necessary consideration for the Hearing Officer to take into account. The Commission need not be confronted with several representation petitions seeking separate and limited units, or a factual record indicating separate organization among groups of employees, to consider the effects of fragmentation. To require such a factual record would, in effect, sanction in the first instance the very type of unit structure which the Commission seeks to avoid. Rather, the concern for a proliferation of negotiations units is an integral factor in determining the threshold question of unit appropriateness, and is part of the consideration relevant to an initial determination pursuant to the statutory community of interest standard.

The undersigned is satisfied that the factual record relevant to the fragmentation issue herein was sufficiently developed. The Hearing Officer properly ascertained the facts, both in the context of the existing unit structure at the College, and in the context of the remaining non-represented professional employees of the College.

A review of the unit structure in existence at the College does not reveal a preference for the small unit. Rather, the units demonstrate a concern for non-fragmentation. As footnoted above, separate units exist for all crafts, and for all security related personnel. Additionally, there is an overall unit of clerical, blue collar, and health care employees including licensed practical nurses. The undersigned does not agree with the Society's assertion that the two separate professional units already in existence open the door to additional units along occupational or disciplinary lines. These units - Instructional Faculty; and Housestaff consisting of physicians, dentists, interns, residents and fellows - represent sound and coherent negotiating unit groupings of personnel whose orientation bespeak the very backbone and purpose of a medical-teaching institution, and whose functions and responsibilities are distinct and removed from other professional employees. Ample justification exists in the context of a medical-teaching institution for the separate treatment of faculty and physicians to warrant their exclusion from a broad-based unit of professional personnel.

A review of the currently non-represented professional titles herein supports the College's concern that approving the proposed unit might lead to a proliferation of units. The State's proffered professional title listing ^{3/} includes approximately 90 allegedly professional titles. Even conjecturing that the various employees in the nursing titles (excluding LPN's who are already represented) might seek placement into one unit, and all of the various technicians and lab personnel petitioned for another unit, there would remain approximately 50 titles, other than the pharmacists, in which personnel might desire representation along occupational lines. Although the undersigned

^{3/} Exhibit R2 submitted March 10, 1976.

is unaware of any apparent move by any of the employees in these titles to organize individual units representing their own professions, the approval of the instant proposed unit could certainly provide the impetus to the remaining professionals to organize their own units along occupational lines and thereby create a chaotic bargaining situation for the College.

In its brief, the Society maintains that because of the pharmacists unique community of interest only three additional units need be formed - the Society's unit, a nurses unit, and a unit for the remaining professionals.^{4/} However, the record herein does not establish that the pharmacists' community of interest is so unique as to overcome the fragmentation factor and to necessitate their separation from the remaining professionals. This is not to denigrate the degree of professionalism among the pharmacists. It is, rather, to say that separate treatment does not appear to be warranted.^{5/}

The Society's second major contention herein is that a sufficient amount of time has passed with no movement toward organizing a broad based professional unit.

Preliminarily, the Society's argument requires further examination in the light of the Professional Association matter, previously

^{4/} Brief in support of Petitioner's exceptions p. 20.

^{5/} The concern of fragmentation herein is paralleled as well in the private labor relations sector. In determining unit structure pursuant to the 1974 health care amendments to the LMRA, the National Labor Relations Board has construed the principal thrust of congressional intent as the avoidance of a proliferation of units. See Mercy Hospitals of Sacramento, Inc., 217 NLRB No. 131, 89 LRRM 1097 (1975). The Board therein found as appropriate an overall unit of professional employees including pharmacists but excluding nurses. (The Board did not at this time consider the question of whether physicians, residents or interns constitute an appropriate unit.) In so finding, the Board concluded that notwithstanding the functional and educational differences among the various groupings of professional employees, they did not evidence, as had the nurses, distinct interests sufficient to warrant a separate unit.

cited in footnote number 2. In the Professional Association matter the Supreme Court upheld a Commission decision finding an all encompassing professional unit to be the most appropriate unit of professional State employees.

The Society argues that the existing organizational structure of units at the College compels an analysis of the proposed unit different from the analysis applied in the Professional Association matter. It states that the latter matter arose in the context of the State professionals constituting a "virgin" group not previously broken down into separate units along occupational lines (i.e. the professionals were not fragmented). With respect to the instant matter, the Society claims that an already existing Housestaff Unit, consisting of physicians and dentists, exists and was formed after the Supreme Court had rendered its decision in the Professional Association matter. According to the Society, the State, through its agency, CMDNJ, "carved out these professionals and consented to their representation in a separate unit with no concern for fragmentation or disharmony." Accordingly, the Society argues the CMDNJ had imputed knowledge of the Professional Association holding, chose not to follow it, and "cannot now utilize that rationale and arbitrarily and discriminatorily apply it to professionals....CMDNJ's conduct in carving out the Housestaff Organization has created a completely different situation which renders the Nurses [Professional Association] rationale inapplicable to CMDNJ."

Having thus compared the context of the Professional Association matter with the instant matter, and finding them not alike, the Society concludes that the "conduct of CMDNJ bespeaks of no movement in the direction of all encompassing units and the Hearing Officer should have made a determination accordingly. Petitioner submits that the time has come to

invoke the mandate in the Nurses case to re-examine the issue of units organized along professional lines." (emphasis added)

The undersigned has previously explored the significance of the two existing units of professional employees as it relates to the issue of the appropriateness of the proposed pharmacists' unit. That need not be reiterated at this juncture. However, the issue as framed speaks specifically to the Supreme Court's prescription in Professional Association that an organization may, after its determination, "lay the matter of appropriate units before the Commission anew" (footnote #2, above) if there is no movement for a substantial period of time towards organization of the most appropriate unit.

The undersigned finds that the Supreme Court's prescription for re-examination contained in Professional Association clearly refers to a passage of time subsequent to the initial determination as to the appropriate unit structure.^{6/} The Court's concern is not to create a circumstance which would for all effective purposes intolerably preclude the representation of any employees; and it provides for an opportunity to have the appropriate unit determination reviewed in the light of subsequent events. Thus, the Society's request for re-examination is misapplied. The determination herein is the first formal examination of the appropriate unit structure of the College professionals.^{7/} Re-examination at this time is premature, and would be

^{6/} The formation of the two existing professional units in this instance has not precluded employees from attempting to organize the most appropriate unit. Moreover, the Society does not assert a desire nor has it attempted to organize the appropriate unit.

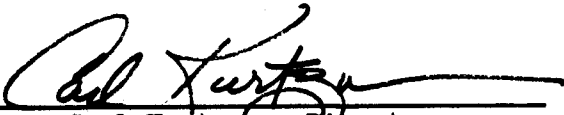
^{7/} Both the College Faculty unit and the Housestaff unit were certified by the Commission after elections held pursuant to consent election agreements, where the parties therein mutually agreed to the appropriate unit structure. See Commission Docket Nos. RO-404 and RO-788. The then Executive Director's approval of those consent agreements was a finding that the unit structure agreed to by the parties was prima facie appropriate. Cf. In re Lenape Reg. H.S. District Bd. of Ed., D.R. No. 77-15, 3 NJPER ____, (1977). See also N.J.A.C. 19:11-2.1. The Executive Director's determinations as to the appropriateness of the Faculty and Housestaff units is fully consistent with the appropriateness of the unit structure of professionals as determined herein.

contrary to the mandate of the Supreme Court and the public policy it expressed in the Professional Association decision.

Having determined that the proposed unit is inappropriate for collective negotiations, it is not necessary at this time to embark on a lengthy review of the secondary issues in this case regarding the supervisory status of certain titles and whether part-time employees should be included in the unit. The Hearing Officer's conclusions of law with respect to these issues are consistent with established Commission pronouncements on these subjects and his findings of fact are clearly supported by the record. Therefore, the undersigned hereby adopts the Hearing Officer's Report and Recommendations as to those issues.^{8/}

Accordingly, the undersigned for the aforementioned reasons, adopts the Hearing Officer's Report and Recommendations. The instant petition is hereby dismissed and the proposed unit is found to be inappropriate within the context of this case.^{9/}

BY ORDER OF THE DIRECTOR OF
REPRESENTATION PROCEEDINGS



Carl Kurtzman, Director
Representation Proceedings

DATED: May 12, 1977
Trenton, New Jersey

^{8/} The transcript reveals that chief pharmacists, and the supervisor of pharmaceutical services do have the authority to effectively recommend the hiring, discharge, or discipline of employees thereby making them supervisors within the meaning of the Act. Additionally, the State has advanced no compelling reasons to warrant a deviation from the Commission's normal policy of including all regular part-time personnel in negotiations units with full time employees once a community of interest has been found.

^{9/} The determination herein does not preclude the Society from filing a petition at an appropriate time in the future seeking re-examination within the context described by the Supreme Court in the Professional Association decision.

STATE OF NEW JERSEY
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NEW JERSEY SOCIETY OF HOSPITAL PHARMACISTS,
PETITIONER

and

NEW JERSEY STATE COLLEGE OF MEDICINE AND
DENTISTRY

DOCKET NO. RO-76-9

PUBLIC EMPLOYER

Appearances:

For the Petitioner

Harper, Mc Coy and O'Brien, Esqs.,
by John J. Harper, Esq.

For the Respondent

William F. Hyland, Esq., Attorney
General of the State of New Jersey
by Guy S. Michael, Esq

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Pursuant to Notice of Hearing, a hearing was held in the above-captioned matter on February 10, 1976, March 10, 1976 and March 11, 1976 before the undersigned Hearing Officer of the New Jersey Public Employment Relations Commission (hereinafter "Commission").

All parties had full opportunity to present argument, evidence and testimony, to cross examine and provide rebuttal witnesses. Post hearing briefs were timely filed by opposing counsel.

Upon the entire record in this proceeding including transcripts of the hearings, exhibits and briefs, the Hearing Officer finds:

1: The New Jersey College of Medicine and Dentistry (hereinafter "College") is a Public Employer within the meaning of the Act and is subject to provisions thereof.

2. The New Jersey Society of Hospital Pharmacists (hereinafter "Society") is a labor organization within the meaning of the Act.

3. Request for recognition was made by Petitioner on June 30, 1975 and no reply thereto was received directly, but the Office of Employee Relations advised Petitioner to file with PERC. Thereafter a Petition for Certification was filed with the Commission.

4. Petitioner seeks a unit of Staff Pharmacists, Chief Pharmacists and Supervisors, Pharmaceutical Services, both full-time and part-time, employed by the College of Medicine and Dentistry of the State of New Jersey at Martland Hospital, Raritan Valley Hospital and Rutgers Medical School, Institute of Mental Health Science (as amended at hearing).

There are three separate locations in which pharmacists are stationed in the College: Martland Hospital (Newark), Raritan Valley Hospital (Green Brook) and Rutgers Medical School Institute of Mental Health (Piscataway).

5. The College objects to the proposed unit as inappropriate in that there are certain other professional employees who should properly be in any unit containing pharmacists. The list of said employees (Ex. R2) consists of some 94 titles, all allegedly professional. The College also objects to inclusion of supervisory titles and to part-time employees.

DISCUSSION

Normally, a practitioner of the Commission would look askance at any unit composed of persons bearing a single title, using as analogy the scheme of separation of units developed within the State of New Jersey.

The innate logic of that scheme, both in creation of wieldy units for the employees and also in a manageable number of units for the employer, quite

over-rides the desiderata of particular skills with a purely parochial interest in representation (PERC No. 68). Traditional as such professionally oriented associations may be, the practicalities of the burden on the public employer must be considered.

Whether or not such thinking can be extended to the microcosm of smaller entities than the State is essentially the business at hand herein. Were the Respondent to appear here de novo, there is all likelihood of a sympathetic ear. But the record shows that the College now has relations with five different negotiations representatives. ^{1/} Therefore, the usual argument against excessive fragmentation loses some applicability in the face of what the College has already wrought. An all-professional unit proposed now as a necessity when two existing professional units are already recognized (faculty and house staff) seems to dilute such a position, if based on analogy with the state experience mentioned above.

Recently, a comparable situation, lacking the force of a directed unit (having been resolved by a consent after the Hearing Officer's Report and Recommendations) occurred at Bergen Pines Hospital. ^{2/} There, Petitioner sought a unit of social workers and psychologists and the County countered with a claim that an over-all professional unit was the only appropriate unit.

The Hearing Officer there found that the unit was appropriate (as amended at hearing, to include all employees in a "non-medical health unit"). The Hearing Officer therein so found, even in the face of a claim that the unit was inappropriate and could only be deemed if all professional and technical employees were included.

1) Units covered are:

1. Local 286 IBT:LPN'S clerical, health care, blue collar.
 2. AAUP - full-time teaching and resident faculty
 3. Essex County Building Trades Bargaining Committee - all crafts.
 4. House Staff Association-Physicians and dentists, interns, residents, and fellows, excluding teaching and resident faculty and part-time faculty
 5. Local 484 - Security guards and security officers.
- The existence of the listed units is administratively notices at request of parties.

2) PERC Docket No. RO-710.

This claim was based on alleged lack of the requisite community of interest specified in the Act and case law. Further objection (pertinent in the instant matter) was based on commonly-held premise that granting of the petition would create the potential for proliferation of numerous small units, to the detriment of the public employer's efficient delivery of the services it was created to offer.

Said proliferation could result in rivalries, bitterness and danger to the health and welfare of patients, it was claimed.

Petitioner in Bergen Pines pointed out that the positions in the requested unit shared the same mission, unrelated to those the employer would include in an over-all professional unit, that the unit requested shared different supervision, that inter-action occurred between members of the requested unit, that they share the same working conditions as distinguished from those titles the employer would add to the unit, and finally that the requested unit has similar educational requirements and eligibility to join their professional associations. The unit agreed upon consisted of all professional employees employed by the Bergen Pines County Hospital in the following titles: Clinical Psychologist, Psychiatric Social Worker, Special Education Teacher, Speech and Hearing Therapist, Rehabilitation Counsellor, Occupational Therapist, Medical Social Worker Teacher, Physical Therapist, Recreation Therapist and Pharmacist. Said unit was described as a "non-medical professional unit" and the term is self-descriptive. The consent likewise amended the Hearing Officer by placing several senior titles in a challenge status, with provisions for a hearing on the eligibility of said titles (because of possible supervisory authorities) if the challenged ballots were determinative.

Significantly, for the within matter, one of the titles added by the consent was "pharmacist". Whether the situation described above created a comparable factual pattern to the present matter hinges upon several aspects,

such as:

(a) Fragmentation versus the right to be represented.

(b) Related to the above is the fact that the Act is more than seven years old and the residual professional group cited as an appropriate unit by the College is not shown in the record to evidence any will to organize itself, therefore may fall within the comment of the Supreme Court in the Professional case,^{3/} in regard to extent of organization, "if, after rendition of our determination herein there continues for a substantial period to be no movement in that direction (organizing the professional employees en masse) it will be open to any interested organization or group of professional employees to lay the matter of appropriate units before the Commission anew,... nothing in our holding or in the discussion of PERC precludes a later determination, under circumstances then existing authorizing units of less than the total body of professional employees."

As read by the undersigned, the above is applied to favor the larger unit in all cases, except that circumstances surrounding a given situation may reasonably influence, if not control, acceptability of a smaller unit than the larger one presented as the most appropriate. This is especially true, it would seem when no petitioner seeks the larger unit. Whether dangers may exist in too-precipitate adoption of such a doctrine, at the price of obvious discomfiture, expense and dislocation, conceivably caused by multiple units for the public employer, or whether it becomes a matter of balancing of interests, is a delicate matter. As between employees caught in an "extent of organization" bind and their right to the privileges and protection of the Act, versus the right of the employer to pursue without undue distractions the functions for which it was created, persuasive arguments may be advanced for and against.

3) 64 N.J. 231 (1974).

The Hearing Officer in Bergen Pines (supra), stated on this question of balance, "The Commission has carefully reasoned that if unit parameters were dictated by the desire of certain employees to be represented along occupational lines rather than broad-based functional lines the statute's objective would be jeopardized as a consequence of the multiplicity of units that would thus be organized". (The latter, of course, is an unprovable prediction, in light of previous observations concerning the age of the Act and apparent lack of desire by employees to organize themselves into the larger unit-- or at all).

In this regard, the Hearing Officer in Bergen Pines (supra), commented, "An examination of the Commission files indicated that the Hospital expressed similar concern during the hearings of June, 1969, leading to the direction of an election in a unit of all licensed firemen and engineers".

They contended therein that "the creation of a very large number of bargaining units would render collective negotiations totally unworkable". But the Hearing Officer remarked, "History has shown that the Hospital's concern regarding a multiplicity of bargaining units has not become a reality in experience and, in fact, there were no other bargaining units certified at the Hospital until June 24, 1974, when a majority representative was certified on behalf of the Hospital's blue-collar workers." Thus presumption of disaster following a limited "carve-out" may not necessarily ensue. However, the Act serves a mandate on the Commission in the creation of units in that there will be "due regard for the community of interest among the employees concerned", (Sec. 34:13A-5.3). There is no caveat as to multiplicity of units, but the Commission has consistently held those units not appropriate which represent a fractional part of a larger group, especially when the community of interest in the larger group goes to the extent of sharing the same titles and the same

general functions as the requested unit (c.f. E.D. No. 38).

The distinction, on the aforementioned balancing of interest, is between a putative inconveniences (at the least) to the public employer and exercise of rights guaranteed to employees in the Act, versus a ceaseless round of negotiations throughout the year (with a consequent loss of time and efficiency) for employers dealing with a multi-unit situation.

However, to the knowledge of the undersigned, no such negotiations morass has ever occurred. In the instant matter, counsel for the Society ably argued that the unit is appropriate in that, because of licensure, the unit comprises a readily distinguishable group, with little or no interaction with all other employees. They are employed by the same employer (College of Medicine and Dentistry of New Jersey) and their work is organized according to strict legal mandate.^{4/} It is separate from all other departments, and there is no interchange with other personnel, in that no one else, routinely, may administer drugs. (Nurses and doctors have some limited emergency access to the pharmacy).^{5/}

For all the foregoing reasons, and others, Petitioner argues that the pharmacists have a community of interest "peculiar to themselves."

Refutation of the Employer's argument regarding the college wide professional unit is submitted by the Petitioner, in that such unit does not exist, nor is it proposed. He further claims that any analogy with the State of New Jersey experience is vitiated by the College's acceptance of units of professionals based upon occupational lines (i.e. a unit of teaching faculty and a unit of interns,

4) Ex. P1, in evidence

5) Tr. p47 line 20.

residents, and fellows), and asserts this position is "inherently inconsistent." ^{6/}

Counsel for the College ably argued that the sought unit was inappropriate using as a reference the State experience, specifically the Professional case, referred to above.

There, the Court reviewed P.E.R.C. No. 68 and concurred with the Commission decision therein. This landmark decision established the "more particularized point of common employee interest" in favor of "a broader community of interest." The Court stated even more firmly, "...this statutory standard requires the designation of as small a number of units as possible..."

In regard to benefits (medical and hospital coverage), holidays, pensions, and fringes, those are all standard for the pharmacist and also others similarly situated, according to witness Hagan. The responsibility to a central authority within each institution was shown, as well as a college-wide personnel function to administer the various fringes common to all employees.

In addition, the pharmacists section chiefs report to an administrator, fitting neatly into an administrative structure which is college-wide. Insofar as uniqueness of a given title is concerned, said isolation of a skill, at least on the State level, was given short shrift in PERC No. 68, supra, "...it (i.e. the Commission) found an additional mutuality of employee interest arising from the kind of work performed, not expressed in terms of specific job titles or function, but in terms of the nature of the service provided."

Thus, it would seem, if the State model controls, that the logic of PERC No. 68 is dispositive. But such conclusion raises a disturbing reservation, namely, down to what level of governmental function does the analogy apply?

6) Petitioner's brief.

References have been made to Bergen Pines, at the County level. Here we are concerned with an agency of the State, legislatively founded in 1971 by N.J.S.A. 18A:64 G-1 et seq (administratively noticed).

Phrased differently, are the real needs of the College the same as the needs of the State, as recognized by the Commission in PERC No. 68, supra? If so, then, by analogy, no unit can be deemed appropriate unless it is college-wide to encompass all employees sharing a broad occupational objective or description. And later, more specifically, "...the purposes of the Act would be better served if, when dealing with professional employees, the individual designations among professions not be regarded as controlling..." (PERC 68, supra).

An inspection of the titles in the proposed professional unit which the College finds appropriate (the residual unit) raises some possibilities that deserve examination. Such inspection of all the titles in Exhibit R-2 in evidence, reveals that setting units by job families alone would yield many units based on single disciplines (e.g. titles such as accountant, senior statistician, plant accountant, all could conceivably be formed into an appropriate unit).

In titles involving the word "nurse" alone there are 17 titles, some of which are presumably occupied by more than one incumbent (...e.g. staff nurse)

Teaching and instruction titles, similarly, could yield ten titles, with the same presumption. In addition, there is a bevy of technical titles and computer-related titles where "more particularized points of common interest might lie."

Based upon the foregoing, therefore, it is the considered conclusion of the undersigned that a finding in favor of the Petitioner herein may well create a chaotic situation. Even though there is an element of the speculative in such a conclusion, it is clear to the undersigned that the purposes of the Act would not be

served by setting the stage for such an eventuality. (Reference is made the "Policy Declaration" (C. 34:13A-2) the preamble to the Act: "...that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected,...").

Within this context, a finding that Petitioner sought an appropriate unit would not serve the larger purposes of the Act, nor create for the College a proper milieu for orderly discourse with the organizations of its employees, but rather risk wasting of its resources among vying organizations intent upon advantage of their separate disciplines.

For it is apparent that all of the professions are needed for the discharge of the duties of the larger organization, the College, and each would be obligated to promote its narrow interests with vigor, to the detriment of the College, and the preservation of good order.

The rivalries in the positions taken and the dangers of seeking advantage based on the particularities of each discipline are so apparent as to diminish the interests of the unit petitioned for, in the name of the broader community the Commission found in PERC No. 68.

Therefore, having considered the entire record, the undersigned finds the facts in this matter, and the established law to be such that he can only recommend that the within petition be dismissed on the grounds that the unit sought is inappropriate.

The foregoing recommendation should not foreclose the Society from access to the same recourse the Court granted in the Professional case (cited above) namely, to apply to the Commission for reconsideration if no movement is made to organize a professional employee unit after a substantial period. Thus, the Court

subordinated the unit question under certain circumstances and provided a route for the protections of the Act,, absent organization of an over-all professional unit, thereby maintaining the balance mentioned above.

There are two other aspects of the within petition which require examination:

1. The supervisory status, if any, of certain titles in the requested unit as amended;
2. The propriety of including part-time employees in the requested unit.

In regard to the supervisory status of the titles in question, e.g., Chief Pharmacist and Supervisor, Pharmaceutical Services, ample testimony and evidence were offered. Exhibit P-10 in evidence is a Position Description of Chief Pharmacist and, except for a designation of "Title and Number of Subordinates," is silent as to the supervisory authorities^{7/} residing in this title.

However, in the course of cross-examination of Mr. Mitrik, Chief Pharmacist at Raritan Valley Hospital, it was revealed that Mr. Mitrik evaluates personnel within his pharmacy and submits same to Personnel.

Similarly, on hiring of new personnel,^{8/} he makes recommendations to Personnel as to the salary level of said new employee, and this can be construed as a recommendation to actually hire such employee.^{9/}

In the same vein, in regard to the Supervisor Pharmaceutical Services (Martland Hospital), the Position Description (Exhibit P-11) is devoid of any reference to supervisory authorities, but testimony of witness Hagan contains the

7) C. 34:13A-5.3 (7) (in part) "...shall any supervisor having the power to hire, discharge, discipline or effectively recommend the same, having the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership."

8) Tr. II, pg. 33, line 22, et seq.

9) Tr. II, pg. 34, line 5

the flat assertion, speaking of Chief Pharmacist:

A: "Essentially the supervisory duty is the right to hire, fire, make recommendations, positive recommendations. My impression is also much heavy budgetary duties, but the first is significant to us in Personnel."

Q: "Would that be true as well to the title of Pharmacist Supervisor at Martland Hospital?"

A: "It would"

The foregoing testimony remained uncontroverted by cross-examination or rebuttal by subsequent testimony, therefore is accepted by the undersigned as a fact. Further, it would appear to be logical to function in the manner as described above by Witness Hagen.^{10/}

The undersigned therefore finds that the titles of Chief Pharmacist and Supervisor, Pharmaceutical Services to contain authorities of a supervisor as defined in the Act, supra, therefore excluded from a unit of pharmacists, in the event the undersigned is reversed upon review in the finding above that the within petition ought to be dismissed.

Insofar as part-time employees are concerned, precedent exists (c f. PERC No. 56) to include such employees with the proposed unit. Fringe benefits are already provided on a pro rata basis^{11/} (and a State-mandated "cut off" on health benefits also already exists), so that employees who work 20 hours or more per week are covered for these benefits^{12/} and those who work less are not. The community of interest is so self-evident that if a unit is found to be appropriate, part-time employees should be a part thereof and the undersigned so recommends. The use of regular^{13/} part-time employees, as is the practice here,

10) Tr. II, pg. 87, line 24, et seq.

11) Tr. II, pg. 106, line 23.

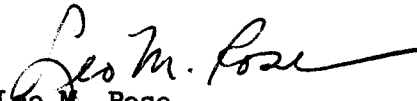
12) Ex. P-6, in evidence; Tr. II, page 14, line 13 et seq.

13) Tr. II, page 6, line 5.

confirms the inclusion of said employees in any unit of pharmacists created (c.f. E.D. No. 67 - Although the conclusions are inapposite, the reasoning in said decision is pertinent herein, because of the previously emphasized regularity of the part-time employment. The conclusions differ because the facts are different i.e. the regularity of employment is clear in the instant matter and was absent in the decision cited).

In summary, the undersigned finds and concludes that the petition in the within matter seeks an inappropriate unit, therefore, recommends that same be dismissed; that Chief Pharmacist and Supervisor, Pharmaceutical Services are supervisors within the meaning of the Act; and that regular part-time pharmacists should be included, in the event the foregoing recommendation is reversed.

Respectfully submitted


Leo M. Rose
Hearing Officer

July 28, 1976
Newark, N.J.