

E.D. NO. 76-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY BOARD OF FREEHOLDERS,  
Public Employer,

-and-

Docket No. RO-743

ESSEX COUNTY INSTITUTIONAL PATROL-  
MEN'S ASSOCIATION, AFFILIATED WITH  
ESSEX COUNCIL #1, NEW JERSEY CIVIL  
SERVICE ASSOCIATION,  
Petitioner.

SYNOPSIS

The Executive Director directs an election in a unit composed of institutional patrolmen, sergeants and captains employed by the Public Employer, adopting pro forma the Hearing Officer's Report and Recommendations in the absence of any exceptions thereto.

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Petitioner.

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Essex County Board of Freeholders, a hearing before Bernard J. Manney was held, after several postponements of the initial hearing date of September 4, 1974, on April 3, 1975. Thereafter, on April 28, 1975, pursuant to N.J.A.C. 19:14A-2.1(b)9, the Hearing Officer ordered the hearing reopened and, again after several postponements, the hearing was concluded on September 8, 1975. At the hearing, all parties were given the opportunity to examine and cross-examine witnesses, to present evidence, to argue orally and to file briefs. Thereafter, on October 22, 1975, the Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof. Exceptions were not filed to the Hearing Officer's Report and Recommendations. The undersigned has considered the entire record and the Hearing Officer's Report and Recommendations and, on the facts in this case, finds:

1. The Essex County Board of Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee

Relations Act, as amended, (the "Act") and is subject to its provisions.

2. The Essex County Institutional Patrolmen's Association, affiliated with Essex Council No. 1, New Jersey Civil Service Association is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Public Employer having refused to recognize the Petitioner as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the undersigned for determination.

4. The Petitioner seeks to represent institutional patrolmen, sergeants and captains employed by the Essex County Board of Freeholders, asserting that these are nonsupervisory, police employees and that they constitute an appropriate unit.

The Public Employer's unwillingness to consent to an election in the unit sought stems from its efforts to restructure the functions and duties of these and other County employees. These efforts has been ongoing for a substantial period of time. The instant petition was filed January 11, 1974 and the record indicates that the County has contemplated making some changes in this area at least since September, 1972. Nevertheless, the disputed employees, approximately 12 in number, continue in their titles as institutional patrolmen, sergeants and captains with their duties unchanged.

The Hearing Officer recommended that an election be

directed among these employees to determine whether they desire to be represented for the purposes of collective negotiations by the Petitioner, finding these employees to be nonsupervising policemen and to constitute an appropriate unit. In the absence of exceptions to the Hearing Officer's Report and Recommendations, the undersigned adopts that Report and Recommendations pro forma. In the event that there is a restructuring of the police and security functions in Essex County, this matter may be reexamined by the Commission upon appropriate application.

5. Accordingly, the undersigned shall direct an election in the following unit: "All institutional patrolmen, sergeants and captains employed by the Essex County Board of Chosen Freeholders excluding managerial executives, confidential employees, professionals, craft and clerical employees, and supervisors within the meaning of the Act."

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

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were

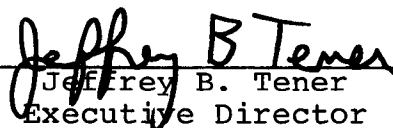
discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to Rule Section 19:11-2.7 the public employer is directed to file with the undersigned 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. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether or not they desire to be represented for the purposes of collective negotiations by Essex County Institutional Patrolmen's Association, affiliated with Essex Council #1, New Jersey Civil Service Association.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR

  
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Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
December 23, 1975

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY BOARD OF FREEHOLDERS

Public Employer

-and-

Docket No. RO-743

ESSEX COUNTY INSTITUTIONAL PATROLMEN'S ASSOCIATION,  
AFFILIATED WITH ESSEX COUNCIL #1, NEW JERSEY CIVIL  
SERVICE ASSOCIATION

Petitioner

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On January 11, 1974, the Essex County Institutional Police-  
men's Association<sup>\*/</sup> filed a timely petition with the Public Employment  
Relations Commission for Certification of Public Employee Representative  
in a unit covering certain employees of the Public Employer. Pursuant  
to a Notice of Hearing, the initial hearing was scheduled for August 12,  
1974. Thereafter, in deference to desires of the parties, hearings  
were rescheduled on the following dates: September 4, 1974, October 2,  
1974, November 1, 1974, December 2, 1974, and January 16, 1975, February 28,  
1975, and April 3, 1975. A hearing was conducted on the latter date be-  
fore the undersigned in Newark, New Jersey. Under the provisions of  
Section 19:14-2.1(a) and (b-9), the undersigned ordered the hearing  
reopened and accordingly, the matter was scheduled for May 30, 1975.  
At the request of the Public Employer, the case was rescheduled to July 31,  
1975. Thereafter, because of the Hearing Officer's illness, the case  
was scheduled for hearing on September 8, 1975. The parties were given

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<sup>\*/</sup> Petitioner's name was amended by stipulation of the parties to "Essex  
County Institutional Patrolmen's Association, affiliated with Essex  
Council No. 1, New Jersey Civil Service Association," (transcript of  
April 3, 1975, p. 8).

the opportunity to examine and cross-examine witnesses, to present evidence and argue orally.

Background

The instant employees are employed at the Essex County Hospital Center in Cedar Grove. In addition, the County employs Security Guards at this institution. The Hospital complex encompasses more than 500 acres (Tr. of April 3, 1975, p.33-34) and over 50 buildings (Tr. of April 3, 1975, p. 20). The facility serves County residents with mental illnesses.

Appearances were recorded as follows:

For the Employer

Francis P. McQuade, Esquire, County Counsel  
By: John A. Matthews, Jr., Esquire  
Assistant County Counsel

For the Petitioner

Fox and Fox, Esquires  
By: David I. Fox, Esquire

Witnesses testifying were:

Nicholas DeHagara, Institutional Patrolman

Herbert M. Gladstone, Personnel Director of Essex County

The record of the proceedings establishes that:

1. The Essex County Board of Freeholders<sup>\*/</sup> is a public employer within the meaning of the Act.
2. The Essex County Institutional Patrolman's Association, affiliated with Essex Council No. 1, New Jersey Civil Service Association is an employee representative within the meaning of the Act.

\*/ The parties stipulated that "Essex County Board of Freeholders is the correct name of the public employer (Tr. of April 3, 1975, p. 7-8).

3. The Petitioner, either in writing or orally, requested recognition of the Public Employer as the exclusive collective negotiations representative for certain employees employed by Essex County Board of Freeholders. This request was denied, either orally or in writing and, therefore, a question concerning representation of public employees is involved and the matter is properly before the Commission for determination.

Issues

The issues before the undersigned are:

1. Are the instant employees policemen within the meaning of the Act? [N.J.S.A. 34:13A-5.3]
2. If found to be policemen, will the instant employees comprise an appropriate unit for purposes of collective negotiations vis-a-vis established practice, prior agreement, or special circumstances. [N.J.S.A. 34:13A-5.3] and, with due regard for the community of interest among the employees concerned? [N.J.S.A. 34:13A-5.3(7)]

Position of the Parties

The Petitioner maintains that the instant employees perform duties commonly associated with a policeman's function [Tr. of April 3, 1975, p. 21-26]; and, they constitute an appropriate unit for purposes of collective negotiations [Tr. of April 3, 1975, p. 16-17].

The Public Employer did not present any evidence or testimony to dispute the status of the instant employees as policemen. However, counsel for the Board of Freeholders stated "that we consider the unit inappropriate at this time since the Freeholders, by certain actions, have eliminated this department." [Tr. of April 3, 1975, p. 13.] <sup>\*/</sup>

\*/This position was modified by testimony of witness Gladstone with the explanation that the substance of resolutions adopted by the Board of Freeholders relating to this matter lacked civil service approval and



\*/ This position was modified by testimony of witness Gladstone with the explanation that the substance of resolutions adopted by the Board of Freeholders relating to this matter lacked Civil Service approval and was, therefore, ineffective and could not be implemented. (Tr. of September 8, 1975, p. 33-41.)

-4-

The Public Employer stated, too,

"...since it is contemplated that...there will be a resolution of this Security Department consolidation in the near future,...we would prefer not to have a separate bargaining unit for the Institutional Patrolmen at this time and that if their request could be delayed until some time that Civil Service...makes its finding on...the standing of the Institutional Patrolmen as to their rights, ...we would then come in with a much more affirmative stand as to a separate unit if Civil Service were to rule that way." (Tr. of Sept. 8, 1975, p. 39).

#### Discussion and Findings

After a review of the record, including the exhibits, the undersigned finds that the instant employees are policemen within the meaning of the Act; and, that institutional patrolmen, sergeants and captains constitute an appropriate unit for collective negotiations.

Witness DeHagara testified that the instant employees investigate and deal with narcotic cases, assaults and batteries, automobile accidents, fingerprinting of employees, breaking and entering cases, drunk and disorderly cases, escapes of patients, larceny, vandalism, and issue summonses for motor vehicle violations. Moreover, they are armed with .38 revolvers and receive formal police training at the Police academy. They patrol in cars equipped with red signal lights and sirens Tr. of April 3, 1975, p. 21-23. Exhibit P-1 reinforces the status of instant employees "as policemen; it represents the annual compilation of police reports from June, 1974, to June, 1975, as prepared for the Director of the Department. The final report delineates the various functions of the institutional police together with the number of occurrences in each instance, to wit: Public Relations Services, Criminal and Quasi-Criminal complaints

and investigations, Motor Vehicle offenses and citations, Emergency and First Aid, animal complaints and related police records. Listed among the tasks performed by the institutional patrolmen are 44 arrests, issuance of 450 motor vehicle summonses, investigating and dealing with 85 assault and battery cases, 429 escapes by patients, 28 larcenies, 17 gambling cases, 2 embezzlement cases and 5 rape complaints. Further information as to the current job duties of the instant employees was supplied by witness Gladstone who testified as to the desire of the Board of Freeholders to create a Security Department "to coordinate and supervise all security programs affecting County grounds and buildings." /Tr. of Sept. 8, 1975, p. 347 In the course of direct examination, this witness testified in part as follows:

- Q: "Mr. Gladstone, in our discussion with Civil Service, both oral, and written, has it been in contemplation that the duties of the Institutional Patrolmen, as they have previously been doing them, would be reduced if they are absorbed into the present Security Department?" (Emphasis added)
- A: "Yes...it is contemplated that the functions of the Institutional Patrolmen would be curtailed, that they would no longer be responsible for investigatory work, that that work would be conducted by the Prosecutor's Office or the local police, that they no longer would perform under cover or surveillance work. They would no longer enforce local ordinances except those pertaining to parking. They would no longer assist surrounding municipalities in enforcing their laws making each municipality responsible for its own law enforcement activities in and around the Hospital proper. They would no longer carry firearms, and no longer leave the grounds of the Hospital center to contain elopement (i.e., escapes) by the patients of the Hospital center. Those are the things we advised Civil Service would be recommendations and duties to be eliminated if the Civil Service Department ruled on the status fo the Institutional Patrolmen." (emphasis added); Tr. of Sept. 8, 1975, p. 39-41.

This testimony also affirmed the current duties performed by the instant employees.

Absent a statutory definition of the term "policemen", the undersigned relies on the rationale developed in County of Gloucester v. Public Employment Relations Commission, 107 N.J. Super. 150 (App. Div.

1969) affirmed per curiam, 55 N.J. 333 (1970). In formulating principles on which to base its judgment in this case, the Appellate Division of the Superior Court read in concert N.J.S.A. 2A:154-4<sup>1/</sup> and N.J.S.A. 34:13A-5.3<sup>2/</sup> and declared:

"When that statute is read with N.J.S.A. 34:13A-5.3, we think it to be apparent that the Legislature was seriously concerned with preventing law enforcement officers, authorized to make detections, apprehensions, and arrests, from joining an employees' union which might place them in a conflicting position and create circumstances for possible divided loyalty or split allegiance." (107 N.J. Super., p. 157)

The undersigned notes, too, that the Commission in P.E.R.C. No. 81, applied the principles of the Gloucester case in deciding that medical security officers were not policemen within the meaning of the Act, and more specifically, that they did not have the power to detect, apprehend and arrest offenders against the law.<sup>3/</sup> For all of the foregoing, the undersigned finds that the instant employees are policemen within the meaning of the Act; and, accordingly, the undersigned next addresses himself to the question of unit appropriateness.

<sup>1/</sup> N.J.S.A. 2A:154-4 declares in part that "all correction officers of the State of New Jersey...shall...in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law." (emphasis added).

<sup>2/</sup> N.J.S.A. 34:13A-5.3 provides in part that "except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership."

<sup>3/</sup> State of New Jersey, Public Employer, and Medical Security Officers Association, Petitioner, and Council #63, A.F.S.C.M.E., AFL-CIO, Intervenor.

The record reveals that the Board of Freeholders employs guards currently included in a collective negotiation unit. /Tr. of Sept. 8, 1975, p. 19.7; and, too, the parties stipulated that there is no collective negotiations unit of policemen in Essex County /Tr. of Sept. 8, 1975, p. 22.7

Witness DeHagara testified: that guards are limited to custodial duties; "but not in the manner of police function." /Tr. of Sept. 8, 1975, p. 23.7; that guards do not carry guns, and do not have Police Academy training; that they do not investigate, and do not gather evidence; that "the price range for the guards is considerably lower than Institutional Police," and that in an emergency, a guard is instructed to call an institutional patrolman to "handle the operation". /Tr. of Sept. 8, 1975, p. 9-17.7. All of this testimony is uncontradicted in the record.

As to the status of sergeants and captains, the undersigned finds that they should be included in a unit with Institutional Patrolmen. N.J.S.A. Chapter 34:13A-5.3 provides in part that,

"except where established practice, prior agreement, or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline or to effectively recommend same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership..."

Witness DeHagara testified as follows vis-a-vis sergeants and captains:

Q: "...you've mentioned that there are patrolmen, sergeants and captains?"

A: "That's correct."

Q: "Basically, do all the individuals do patrolling and police work?"

A: "That is correct."

Q: "As far as supervision is concerned, who do all three titles ultimately account to as far as the supervisor?"

A: "Ultimately, they respond to the Director."

Q: "Who is the Director?"

A: "Mr. Anthony Guiliano."

Q: "So that for the purpose of taking directions as to what you do in certain specific situations, as to all three of the titles...categories, you have mentioned, patrolmen, the sergeants, and the captains, who would those directions come from, Mr. Guiliano?"

A: "They would come from the Director ultimately."

Q: "Now, do all these sergeants, captains and patrolmen, do they all patrol and perform basically the same functions that you have described previously?"

A: "I would say yes." / Tr. of April 3, 1975, p. 24-25.7

This testimony was uncontradicted in the record. Absent evidence or testimony to indicate that sergeants and/or captains have supervisory functions within the meaning of the Act, the undersigned finds that they are not supervisors and share a community of interest with the Institutional patrolmen.

As to the request of the public Employer regarding a delay of a Commission decision in this matter pending the outcome of a related Civil Service case, the Hearing Officer is unaware of any statutory basis for P.E.R.C. acquiescence or compliance. Accordingly, the undersigned finds the unit of institutional patrolmen, sergeants and captains appropriate for purposes of collective negotiations in accordance with the provisions of N.J.S.A. 34:13A-6(d).\*/

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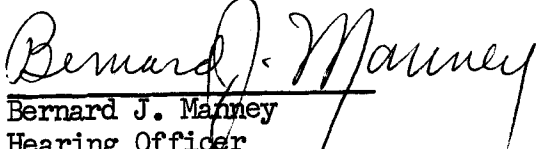
\*/ This Section of the Act requires that the Commission, in the event of a dispute shall "decide in each instance which unit of employees is appropriate for collective negotiations."

Recommendations:

From all of the foregoing and the official record of these proceedings, the undersigned recommends:

1. That a secret ballot election be conducted among the employees as hereinafter delineated in the designated appropriate unit and the date for the election shall be determined by the Public Employment Relations Commission.
2. The appropriate unit shall include: "all institutional patrolmen, sergeants, and captains employed by Essex County Board of Freeholders, and exclude: managerial executives, professionals, craft and clerical employees and supervisors within the meaning of the Act."
3. Those eligible to cast ballots in this election shall vote on whether or not they desire to be represented for purposes of collective negotiations by the Essex County Institutional Patrolmen's Association, affiliated with Essex Council No. 1, New Jersey Civil Service Association,

Respectfully submitted,

  
Bernard J. Manney  
Hearing Officer

DATED: October 22, 1975  
Trenton, New Jersey