

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

In the Matter of

CITY OF JERSEY CITY,

Public Employer,

-and-

DISTRICT 1199J, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES,
RWDSU, AFL-CIO,

DOCKET NO. RO-82-22

Petitioner,

-and-

LOCAL 246, JERSEY CITY PUBLIC
EMPLOYEES,

Intervenor.

SYNOPSIS

The Director of Representation, adopting the recommendations of a Hearing Officer, dismisses a petition filed by District 1199J seeking to represent first grade sanitary inspectors employed by the City of Jersey City. The Director finds that the record did not show that the incumbent intervenor irresponsibly represented the petitioned-for employees and therefore severance of those employees from the established unit is not warranted. The Director also agrees with the Hearing Officer that the petitioned-for unit is inappropriate because it would consist of employees solely in one occupational line.

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LOCAL 246, JERSEY CITY PUBLIC
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Intervenor.

Appearances:

For the Public Employer
Thomas Fodice, First Assistant Corporation Counsel
(Paul W. Mackey of counsel)

For the Petitioner
Greenberg, Margolis, Ziegler & Schwartz, attorneys
(Mark Tabenkin of Counsel)

For the Intervenor
Philip Feintuch, attorney

DECISION

On September 3, 1981, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") by District 1199J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO

("District 1199J") with respect to a proposed unit consisting of sanitary inspectors (first grade) employed by the City of Jersey City ("City"). The employees are presently represented by Local 246, Jersey City Public Employees ("Local 246").

Pursuant to a Notice of Hearing, hearings were held before Commission Hearing Officer Arnold H. Zudick on January 5 and 6, October 6 and 20, 1982. At the hearing all parties ^{1/} were provided the opportunity to examine and cross-examine witnesses, to present evidence and to argue orally.

On February 28, 1983, the Hearing Officer issued his Report and Recommendations, a copy of which is attached hereto and made a part hereof. No exceptions to the Hearing Officer's Report have been filed.

The undersigned has considered the entire record and the Hearing Officer's Report and Recommendations and on the facts in this case finds and determines as follows:

1. The City of Jersey City is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), is the employer of the employees involved herein, and is subject to the Act's provisions.
2. District 1199J, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, is an employee representative within the meaning of the Act and is subject to its provisions.

^{1/} After participating in the first two days of hearing, Local 246 advised the Hearing Officer that it would not continue to participate in the proceedings.

3. Local 246, Jersey City Public Employees is an employee representative within the meaning of the Act and is subject to its provisions.

4. Local 246 is the current majority representative of a unit containing all nonsupervisory blue and white collar employees in several departments of the City including the Department of Human Resources, in which the petitioned-for individuals are employed. Local 246 has had a formal contractual relationship with the City covering unit employees since at least 1972.

5. District 1199J argues that the petitioned-for employees are professional employees within the meaning of N.J.A.C. 19:10-1.1 ^{2/} and thus are entitled to a secret ballot election pursuant to N.J.S.A. 34:13A-6(d) through which they would exercise their preference for separate representation. District 1199J also argues that the first grade sanitary inspectors should be severed

^{2/} N.J.A.C. 19:10-1.1 provides, inter alia, as follows:

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

from the existing unit due to the alleged failure of Local 246 to fairly represent the petitioned-for employees.

6. The Hearing Officer found that District 1199J did not meet the standards required for severance of employees from an existing negotiations unit, as set forth by the Commission in In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971). The Hearing Officer found that there was no showing in the record that Local 246 had not responsibly represented the petitioned-for employees, either in negotiations or grievance/contract administration. With respect to District 1199J's allegation that Local 246 had not supported a discharged employee in his efforts to regain his job, the Hearing Officer found that the discharged employee had not asked Local 246 to file a grievance on his behalf.

The Hearing Officer also found that the first grade sanitary inspectors were professional employees within the meaning of the Act. He made this recommended finding based on the sanitary inspectors' considerable educational requirements, discretion and the performance of work under minimum supervision. Notwithstanding this finding, the Hearing Officer recommended the dismissal of the instant Petition. Applying Commission ^{3/} and judicial precedent ^{4/} to the record herein, the Hearing Officer found that the petitioned-for unit is inappropriate. The Hearing Officer found that a variety of professional titles were contained in the existing unit

^{3/} In re State of New Jersey, P.E.R.C. No. 68 (1972); In re N.J. State College of Med. and Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977).

^{4/} State of New Jersey v. Prof. Assoc. of N.J. Dept. of Ed., 64 N.J. 231 (1974).

and outside the unit, and the Petitioner's failure to seek a broad-based professional unit must result in the dismissal of the Petition.

The undersigned, pursuant to an independent review of the record, and noting the absence of any exceptions to the Hearing Officer's Report and Recommendations adopts the Hearing Officer's findings and conclusions that the record does not demonstrate a finding of irresponsible representation to warrant a severance of sanitary inspectors from the Local 246 unit on the basis of Jefferson, supra.

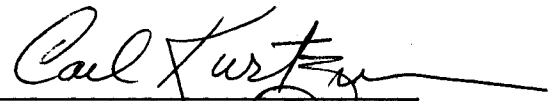
Further, assuming, without deciding, that the first grade sanitary inspectors are professional employees within the meaning of the Act, the undersigned agrees with the Hearing Officer's conclusion that the instant Petition presents an inappropriate unit structure. The petitioned-for unit consists of employees solely in one occupational line, while the record reveals that there are numerous other professional titles existing in the employ of the City, both within and outside the negotiations unit currently represented by Local 246. As the undersigned noted in In re New Jersey State College of Medicine and Dentistry, supra, n.3, a negotiations unit consisting of a single professional line is not normally appropriate when several professional lines may be combined to form a broad-based negotiations unit.

Having thus found that Local 246 has not irresponsibly represented the sanitary inspectors and that the proposed unit is

inappropriate, there is no basis for the establishment of the unit under severance standards or through the exercise of a professional option vote.

For the reasons stated above, the undersigned finds the petitioned-for unit inappropriate and denies the request for a professional option vote. The Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: August 23, 1983
Trenton, New Jersey

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

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CITY OF JERSEY CITY,

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-and-

DISTRICT 1199J, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES,
RWDSU, AFL-CIO,

DOCKET NO. RO-82-22

Petitioner,

-and-

LOCAL 246, JERSEY CITY
PUBLIC EMPLOYEES,

Intervenor.

SYNOPSIS

A Hearing Officer of the New Jersey Public Employment Relations Commission recommends that Sanitary Inspectors First Grade employed by the City of Jersey City are professional employees within the meaning of the New Jersey Employer-Employee Relations Act. The Hearing Officer concluded, however, that the petitioned for unit of sanitary inspectors was inappropriate for two reasons. First, the Hearing Officer found that the Petitioner did not satisfy the Commission's severance standards. Second, the Hearing Officer found that the City employed numerous other professional employees with whom the sanitary inspectors could attempt to organize into a more appropriate broad-based professional unit. The Hearing Officer therefore recommended that the Petition be dismissed.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Appearances:

For the Public Employer
Thomas Fodice, First Assistant Corporation Counsel
(Paul W. Mackey of counsel)

For the Petitioner
Greenberg, Margolis, Ziegler & Schwartz, attorneys
(Arthur S. Kramer of counsel)

For the Intervenor
Philip Feintuch, attorney

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") on September 3, 1981, by District 1199J National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO

("Petitioner"), seeking to represent in a separate unit, all sanitary inspectors first grade (approximately 13 people) employed by the City of Jersey City ("City") and currently included in a broad-based unit represented by Local 246, Jersey City Public Employees ("Intervenor" or "Local 246"). ^{1/} The Petitioner seeks a secret ballot election for sanitary inspectors in an attempt to form a separate unit because it alleged that said title was a professional title within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and therefore entitled to exercise the professional option provided for in the Act. ^{2/} In addition, the Petitioner asserted that the sanitary inspectors should be severed from the existing unit based upon the Commission's severance standard set forth in In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971) because allegedly the Intervenor failed to fairly represent the employees in question.

Both the City and the Intervenor opposed the Petition both arguing that the employees in question were not professional. In addition, the Intervenor argued that it did not fail to fairly represent the sanitary inspectors, and the City argued that even if these inspectors were professional, the petitioned-for unit was

^{1/} The Petition was actually worded as follows: "All full-time and regular part-time nonsupervisory professional employees employed by Jersey City in the Department of Human Resources Health Division."

^{2/} At N.J.S.A. 34:13A-6(d)(2), the Act provides for a professional option as follows:

... no unit shall be appropriate which includes ... (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit

inappropriate because the Petitioner failed to petition for a broad-based professional unit as evidenced by its failure to include several other titles which are professional.

Pursuant to a Notice of Hearing dated November 5, 1981, hearings were held in this matter before the undersigned Hearing Officer on January 5 and 6, September 16, October 6, and October 20, 1982, ^{3/} in Newark, New Jersey, at which all parties had an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. ^{4/} Although at least one of the parties at the October 20 hearing expressed interest in filing a post-hearing brief, subsequent to the close of hearing, no briefs were actually filed. ^{5/}

Based upon the entire record in these proceedings, the Hearing Officer finds:

3/ During the hiatus in the hearing between January 6 and September 16, 1982, the parties made several attempts to resolve this matter. Meetings were held and offers exchanged, but ultimately the matter could not be resolved.

4/ Although the Intervenor appeared at and participated in the first two days of hearing (January 5 and 6, 1982), it chose not to participate in the remainder of the hearing. By letters dated May 7, 1982 (Exhibit A-6B) and August 30, 1982 (Exhibit A-6A), the Intervenor advised the undersigned that it was discontinuing any participation in the instant matter. The City however continued to participate in the entire matter.

5/ At the close of the hearing on October 20, 1982, the Petitioner expressed interest in filing a post-hearing brief and the undersigned agreed to fix a date after the receipt of the transcript. The October 20 transcript was received on November 4, 1982, and by letter dated November 5, 1982, the undersigned fixed December 17, 1982, as the date for receipt of briefs. By letter dated November 24, 1982, the City inquired whether the undersigned was "requiring" post-hearing briefs. The undersigned responded by letter dated November 30, 1982, that the decision to file briefs must be made by the respective parties. Subsequently, neither the City nor the Petitioner filed any briefs.

1. The City of Jersey City is a public employer within the meaning of the Act, is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

2. District 1199J, NUHHE, and Local 246, Jersey City Public Employees, are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Intervenor is the current majority representative of a broad-based unit of nonsupervisory blue and white collar City employees which includes the sanitary inspectors first grade. The Intervenor has represented this unit and title since approximately 1972 (Exhibit J-5). ^{6/}

4. The Petitioner, in the belief that the Intervenor has failed to fairly represent the sanitary inspectors, seeks a

^{6/} The pertinent portion of the Intervenor's recognition clause reads as follows:

A. The City hereby recognizes Local 246 as the collective negotiations agent for all non-supervisory blue and white collar employees in the following named departments: Department of Administration; Department of Finance; Department of Personnel; Department of Law (non-professional employees only); Department of Public Safety (non-uniformed employees only); Department of Human Resources (except Parks and Recreation); the Department of Community Development and the Office of the City Clerk.

However, Local 245, Jersey City Public Employees also represents certain nonsupervisory blue and white collar employees employed by Jersey City as indicated in its recognition clause:

A. The City hereby recognizes Local 245 as the collective negotiations agent for all non-supervisory blue and white collar employees in the following categories:

1. Department of Public Works; all divisions, including engineering
2. Department of Human Resources; Division of Parks and Recreation and bus drivers of the Division of Transportation.

secret ballot election to determine whether those employees wish to be represented in a separate unit. In the alternative, the Petitioner, in the belief that sanitary inspectors are professional employees within the meaning of the Act, seeks a secret ballot election to give those employees the opportunity to exercise their professional option to be represented in a professional unit. ^{7/} The City and Intervenor refuse to consent to an election and argue that the Petition should be dismissed because the severance standards have not been met; because the sanitary inspectors are not professional employees; and, because even if those employees are professional, the unit petitioned-for is inappropriate because it fails to include other professional employees. The parties have been unable to agree upon the appropriate unit for sanitary inspectors, therefore, a question concerning representation exists, and the matter is appropriately before the undersigned for Report and Recommendations.

5. Professional employees are defined in N.J.A.C.

19:10-1.1 as follows:

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one

^{7/} The Petitioner is not seeking two elections. Rather, it is seeking only one election but trying to justify it on either or both the Commission's severance standards, or the professional option requirement set forth in the Act.

of the fields described above, and who is performing related work under the supervision of a professional person to qualify to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

6. There are three issues in this matter. First, did the Petitioner satisfy the Commission's severance standards? Second, are the sanitary inspectors professional employees within the meaning of the Act? Third, if the sanitary inspectors are professional employees, should the Petition be dismissed because the Petitioner failed to petition for a broad-based professional unit?

Findings of Fact

I. In support of its severance argument, the Petitioner relied upon the testimony of Lou Manzo, one of the sanitary inspectors, who testified concerning certain events which he believed demonstrated a failure by the Intervenor to fairly represent his interests, and the interests of sanitary inspectors.

Manzo first testified about the time he was discharged allegedly because of political reasons. Upon learning of his discharge, Manzo approached Peter Schriber, President of Local 246, and asked Mr. Schriber if there was anything that he could do for him regarding his discharge. Manzo stated that Schriber's response was that "there is nothing he could do and that the people upstairs could do whatever they want." (T III p.6). Schriber subsequently testified that no such meeting took place.

(T IV p.50) However, even if Schriber made the statement attributed to him, Manzo admitted that he never asked the union to file a grievance on his behalf, nor did the union ever refuse to file a grievance; nor did the union refuse to represent him if such a grievance were filed; nor did Manzo ask the union to provide him legal counsel to assist him in his efforts to regain his position (T III pp 7, 11). Manzo admitted that it was his own attorney that suggested that he not file a grievance concerning his discharge and that the discharge involved a first amendment right of freedom of association and did not involve a contractual right. (T III p.11)

Schriber also testified that sanitary inspectors have not been very active in Local 246. He indicated that sanitary inspectors had not sought to be on the negotiations team and they had not asked to have particular issues presented at the table on their behalf, nor did Manzo ever attend the monthly union meetings. (T III pp 40, 61). He also indicated that grievance forms as well as union contracts are made available to everyone in the Local 246 unit including Manzo and the other sanitary inspectors.

In addition to testimony concerning his discharge, Manzo indicated that he has continuously asked officers of Local 246 to help him as well as other sanitary inspectors obtain a permanent civil service appointment. Manzo testified that Local 246 responded that it was "powerless in a situation like that." (T III p. 14).

Finally, Manzo testified that despite his request, Local 246 has not assisted the sanitary inspectors in gaining City

compliance with N.J.A.C. 26:3-25.1 which provides that sanitary inspectors be moved to their maximum salary range within five years from his/her date of appointment. (See also Exhibit P-1). Manzo asserted that the Intervenor's inaction in that regard amounted to a failure of fair representation.

II The duties, requirements and responsibilities of the sanitary inspectors first grade are set forth in a variety of exhibits, P-1 through P-5. The specific requirements to obtain a State license for sanitary inspectors is contained in Exhibit P-1, which may also be cited as N.J.A.C. 8:7-1.9(a) and (b), provide that as of July 1, 1981, sanitary inspectors shall have a baccalaureate degree with a minimum of 32 credit hours in the biological, physical or environmental sciences and mathematics and that they have completed a course in environmental health and law conducted by Rutgers, the State University. In addition to those educational requirements, individuals seeking such a position must complete a field training course. Prior to July 1981, sanitary inspectors needed only an Associate Degree with six hours in the biological and/or physical sciences as well as completion of the training course.

The duties of the sanitary inspectors are extensive and diversified in that they have a wide range of authority to, among a variety of things, inspect food and food handling establishments; they have authority to check a variety of structures for rodent and pest infestations; and they have authority to check a variety of structures to see that they meet sewage and sanitation disposal

requirements, and they can inspect water quality and swimming pools. But in addition to inspecting and checking these items, the sanitary inspector has full authority to embargo or prevent the sale of unwholesome foods, order ill or infected employees to leave the establishment, and they may actually close a food establishment or other type of business if they determine that it is necessary to protect the public health. ^{8/} In checking food handling establishments as well as inspections for infestations and sanitation, the sanitary inspectors have full authority and discretion to recommend, and in fact require, specific methods of treatments to abate the particular problem. The inspector will subsequently determine whether the form of treatment has resolved the problem.

8/ See New Jersey State Sanitary Code Regulation 9.6.

9.6 Closure for Infection:

The department or health authority having reason to suspect that any retail food establishment is or may be a source of food borne infection shall advise the owner, manager, or employees thereof accordingly and order appropriate action to be taken which will eliminate the source of infection. In the event such action is not taken immediately, the department or health authority may cause an order to be issued requiring the establishment to be closed in order to protect the public health. The order will give the alleged violator an opportunity to be heard within a reasonable time not to exceed 15 days while the order remains in effect.

The department or health authority which suspects an employee of any retail food establishment is ill or infected with a disease, or may be a carrier of a disease, which may be transmitted through food, may order him or her to leave the establishment and refrain from returning to work, until permission is granted to return by the department of health authority.

In the event of serious violations of the health and sanitary codes, or in the event that the inspector's prior treatment requirements have not been followed, the inspector has the authority and discretion -- without checking with any other source -- to issue tickets or summonses and require appearances in Housing Court at which the sanitary inspector can serve as an expert witness on behalf of the City (T II pp 95, 98).

In addition to issuing summonses, the sanitary inspectors in severe violations of health and sanitary codes, may, in certain situations, arrest violators without a warrant. ^{9/} But in conducting investigations of violations of drug and cosmetic laws, the inspectors have the authority to execute and serve warrants as well as the power of arrest. ^{10/}

9/ N.J.A.C. 24:14-14. Arrest without warrant.

Any constable, police officer, or inspector of the state department or of a local board may arrest, without warrant, any person who shall violate any provision of this chapter within the view of such constable, police officer or inspector.

10/ N.J.A.C. 24:6D-3. Enforcement

a. It is hereby made the duty of the State Department of Health, its officers, agents, inspectors and representatives, and of all peace officers within the State, and of all county prosecutors, to enforce all provisions of this chapter, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other states, relating to counterfeiting of trademarks used in connection with drugs, cosmetics or devices.

b. The commissioner and any officer or employee of the department designated by the commissioner to conduct investigations or engage in other enforcement activities relating to the counterfeiting of drugs, cosmetics or devices shall

(Continued)

The sanitary inspectors are not on a rigid time schedule or time table, they do have a check-in time in their office in the morning but otherwise, they schedule and determine their own cases. They determine how often to reinspect a given establishment which has had violations in the past. The sanitary inspector's authority, although to a certain extent delegated by the health officer which is his superior, nevertheless can be exercised without calling into the office to obtain prior approval.

III In support of its position that there are other professional employees who could be organized as a professional unit with sanitary inspectors, the City presented the following information: Thomas Fodice, the City's First Assistant Corporation Counsel, testified that the City employs approximately 23 attorneys, only approximately 3 of whom perform labor related work, and he indicated that all attorneys are currently unorganized (T IV pp 13-16). In addition to the attorneys, Joseph Macula, Chief Accountant testified that there are approximately 14 accountants employed by the City who are college graduates and who are included in Local 246's unit as evidenced by Exhibit E-19 (T IV pp 75-76). In addition to the accountants, Exhibit E-19, which is a list of titles included in Local 246's 's unit (with two exceptions), also lists a senior chemist which requires a BS degree, a microbiologist,

10/ Continued

have the power to execute and serve search warrants and shall have the power of arrest in cases of violation of this chapter, and may in the discharge of their duties, call in the aide of a constable, sheriff, or other peace officer when deemed necessary.

a public health nurse, senior budget examiner, planning draftsman, and several planner titles.

In addition, testimony by Gerald Nissien, Director of the Division of Engineering, revealed that his department employs 11 engineers, 1 licensed architect all of whom have either a BS or BA Degree. The job description for the engineers provided in Exhibit E-2 indicate duties and responsibilities normally associated with engineers, particularly those active in the buildings and constructions area including project engineers who are involved in inspection of new buildings in the City. In addition to the engineers, Mahmoud Arafat, the Building Support Official, testified about the duties and responsibilities of the building inspectors. The evidence indicated that the educational requirements for building inspectors varies depending upon which license they hold, however, he indicated that at least some of the 11 building inspectors employed by the City have either an engineer's or architect's license which require a college degree. (T III pp 49-55) (See also Exhibits E-4 and E-6). The duties of the building inspector involve the examination of primarily completed buildings, and inspection to determine whether they are in violation of any building codes. The building inspector has authority to issue summonses to Housing Court and has authority to represent the City in the courts. (T III pp 64-66). The building inspectors exercise considerable discretion in deciding how to treat any violation he/she may find including the right as to whether or not to pursue the matters to Housing Court.

Decision and Analysis

Severance:

In In re Jefferson Tp. Bd. of Ed., supra, the Commission indicated that for one particular group of employees to obtain a severance from a larger existing unit of employees it was necessary to show that the relationship between the specific group and the unit was unstable, or that the incumbent organization, in this case the Intervenor, has not provided responsible representation. The Petitioner has not alleged that the Intervenor's unit which includes the sanitary inspectors is unstable, but it has alleged that the Intervenor failed to fairly represent the sanitary inspectors. In order to prove that point, the Petitioner has relied upon Manzo's testimony that Local 246 failed (1) to assist him regarding his discharge for political reasons; (2) that it failed to assist certain sanitary inspectors in obtaining permanent civil service classification; and (3) that Local 246 took no action to move sanitary inspectors to their maximum level pursuant to N.J.A.C. 26:3-25.1.

Normally, the duty of fair representation arises in the context of a union fairly representing an employee in the processing of a grievance, in meetings which may result in discipline, and in contract negotiations. The United States Supreme Court established certain principles regarding the duty of fair representation in Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967). For example, the Court said:

The breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the ... unit is arbitrary, discriminatory, or in bad faith. 64 LRRM at 2376.

The National Labor Relations Board has interpreted "arbitrary, discriminatory, or bad faith" from time to time and held in Teamsters Local 692 (Great Western Unifreight), 209 NLRB 446, 85 LRRM 1385 (1975), that negligent union action or inaction by itself would not be considered arbitrary, invidious, or a breach of the duty of fair representation.

The Supreme Court has also held that to establish a claim of a breach of the duty of fair representation,

... carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives. Amalgamated Assoc. of Street & Electric Railway & Motor Coach Employees of America v. Lockridge, 403 U.S. 274, 301, 77 LRRM 2501, 2512 (1971).

This Commission and the New Jersey Courts have frequently relied upon federal policy including Court and National Labor Relations Board decisions in formulating its own labor policy. See Lullo v. Intern'l. Assoc. of Firefighters, 55 N.J. 409 (1970). In fact, in Belen v. Woodbridge Tp., 142 N.J. Super. 486, 490-491 (App. Div. 1976), the Court held that the duty of fair representation as developed under the National Labor Relations Act was an appropriate guide for interpreting our Act.

In applying the law as stated, the undersigned is convinced that the facts do not support a finding that Local 246 failed to fairly represent Manzo or any sanitary inspector. There was no showing by the Petitioner that the Intervenor's actions or inactions with respect to Manzo's discharge, the civil service classifications or the salary level issue was arbitrary, discriminatory or in bad faith.

Regarding Manzo's discharge, the evidence shows that Manzo could have filed a grievance, instead, he elected to proceed in a law suit. The Intervenor never, in fact, refused to represent Manzo in the processing of a grievance. Even assuming that Schriber stated that there was nothing he could do for Manzo, the discharge did not involve a contractual violation, and Manzo chose to hire his own attorney rather than specifically ask Local 246 to represent him.

Regarding the civil service classification, the affected employees did not file a grievance over that issue nor did they ask the Intervenor to assist them in proceedings before civil service. Consequently, there was no showing that Local 246 failed or refused to fairly represent the employees over that matter.

Finally, regarding the compliance with N.J.A.C. 26:3-25.1, once again, the affected individuals did not file a grievance over this matter, nor did they demonstrate that their own collective agreement was violated in any manner concerning this issue. In fact, the enforcability of N.J.A.C. 26:3-25.1 is in doubt since that rule limits the public employer in negotiating wages and

salary schedules which are negotiable terms and conditions of employment pursuant to the Act.

Sanitary Inspectors:

The undersigned is convinced that the sanitary inspectors first grade are professional employees within the meaning of the Act. Their duties and responsibilities are predominately intellectual in character, they involve the consistent exercise of discretion and judgment and they require knowledge of an advanced nature in the field of biological and physical sciences.

Specifically, the sanitary inspectors exercise considerable discretion in deciding how to detect, treat, and enforce violations of local and state sanitary codes. Their educational requirements have recently been increased and reflects a greater emphasis on science and training requirements. Finally, they perform their work with a minimum of direct supervision all of which justifies their being placed in a professional status.

When compared with the community mental health worker in In re Jersey City Medical Center, D.R. No. 80-9, 5 NJPER 456 (¶ 10230 1979), and the aides in In re Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976), both of which were found to be professional titles, the sanitary inspectors exercise at least the same if not a greater level of discretion and have similar educational requirements as those titles. See also, In re Bergen Pines Hospital (Medical Librarians), D.R. No. 80-20, 6 NJPER 61 (¶ 11034 1980).

The Appropriate Unit:

Despite having found that the sanitary inspectors are professional employees, this Petition must be dismissed. The Petitioner has petitioned for a very narrow and inappropriate unit. The Commission and the courts have held on more than one occasion that the most appropriate unit for representation of professional employees is a broad-based unit among varied functional lines.

In In re State of New Jersey, P.E.R.C. No. 68 (1972), the Commission said:

... The Commission is inclined to believe that the purposes of the Act will be better served if, when dealing with professional employees, the individual distinctions among the professions not be regarded as controlling, but rather the more elementary fact that they are simply professionals and on that basis alone to be distinguished from other groups of employees. at slip op. p. 7.

That decision was upheld by the New Jersey Supreme Court in State of New Jersey v. Professional Assoc. of New Jersey Dept. of Ed., 64 N.J. 231 (1974) where the Court agreed that the broad-based unit of professional employees was more appropriate than professional units drawn along specific occupational lines.

In a subsequent decision, In re New Jersey State College of Medicine & Dentistry, D.R. No. 77-17, 3 NJPER 178 (1977), the Commission dismissed a petition for a unit of pharmacists because a college-wide unit of professional employees was more appropriate.

The instant Petitioner has made the same mistake committed by the petitioner in State College of Medicine & Dentistry, supra. It has petitioned for a unit along only one occupational line while there are several professional titles existing in the City with whom the sanitary inspectors may have joined to form a broad-based negotiations unit. For example, in the Intervenor's unit alone there are at least 4 professional titles, accountants, principal accountants, senior accountants, and senior chemist, which encompass approximately 15 people with whom the sanitary inspectors could attempt to form a professional unit. In addition, the Intervenor's unit contains a public health nurse which, if a registered nurse rather than a licensed practical nurse, is a professional title; and it contains a microbiologist, a senior budget examiner, and several other titles which may be professional.

There are also several other professional titles in the City outside the Intervenor's unit which could be included in a professional unit. For example, the City employs approximately 11 engineers and at least 1 licensed architect who are professional employees; it employs approximately 20 attorneys not involved in labor relations who are clearly professional employees; and it employs several building inspectors, some of whom hold an engineering or architect degree, who are also professional employees within the meaning of the Act. Consequently, it is apparent that a variety of professional titles exist both inside and outside the Intervenor's unit and the Petitioner's failure to seek a broad-

based professional unit must, therefore, result in the dismissal of this Petition. 11/

Recommendations

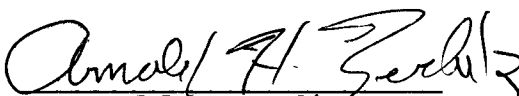
Accordingly, based upon the above discussion the undersigned Hearing Officer recommends the following:

1. The Petitioner did not satisfy the Commission's severance criteria and is not entitled to a severance of the petitioned-for unit.

2. Sanitary inspectors first grade are professional employees within the meaning of the Act.

3. The petitioned-for unit is inappropriate and the Petition should be dismissed in its entirety. 12/

Respectfully submitted


Arnold H. Zudick
Hearing Officer

DATED: February 25, 1983
Trenton, New Jersey

11/ It is not the purpose of this decision to fashion the appropriate professional unit, but merely to indicate that other professional titles exist with whom the sanitary inspectors may form a professional unit.

12/ The parties must be on notice that should the Director of Representation dismiss the Petition because the proposed unit is inappropriate, he may find it unnecessary to issue any formal decision with respect to the professionalism of sanitary inspectors.