

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

LOCAL 1158, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO,

DOCKET NO. RO-80-93

Petitioner,

-and-

ESSEX COUNTY EMPLOYEES
ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation dismisses a Petition for Certification of Public Employee Representative filed by security officers who desire to be excluded from a countywide negotiations unit and to have Petitioner represent them in their own separate unit for collective negotiations. The Director, agreeing with a Hearing Officer, determines that security officers have not been irresponsibly represented by their current representative and that the existing relationship is not unstable.

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Intervenor.

Appearances:

For the Public Employer
Grotta, Glassman & Hoffman, attorneys
(Thomas J. Savage of counsel)

For the Petitioner
Robert C. Sarcone, attorney
(Gerald E. Fusella of counsel)

For the Intervenor
Thomas E. Durkin, Jr., attorney
(Thomas E. Durkin, III of counsel)

DECISION

On November 8, 1979, a Petition for Certification
of Public Employee Representative was filed with the Public

Employment Relations Commission (the "Commission") by Local 1158, International Brotherhood of Electrical Workers, AFL-CIO ("Local 1158") seeking a collective negotiations unit comprised of all security officers employed by the County of Essex (the "County"). These employees are currently represented by the Essex County Employees Association (the "Association") and are included in a unit comprised of all County employees, with certain specified exclusions.

Pursuant to a Notice of Hearing, a hearing was held before Commission Hearing Officer Bruce Leder on April 15, 1980, in Newark, New Jersey, at which time all parties were given an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. No briefs were filed with the Hearing Officer. The Hearing Officer issued his Report and Recommendations on June 20, 1980, a copy of which is attached hereto and made a part hereof. On July 1, 1980, Local 1158 filed exceptions to the Hearing Officer's Report. Neither the County nor the Association has filed exceptions to the Report, nor have they filed an answer to the exceptions filed by Local 1158.

The Commission Hearing Officer properly noted that in order for the security officers to be removed from the overall unit of County employees and to form their own unit, the evidence must initially demonstrate that the existing relationship is unstable or that the incumbent organization has not provided responsible representation. The Commission

stated in In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61
(1971):

The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to redefinition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

The Hearing Officer concluded that the evidence presented did not demonstrate that the Association had provided irresponsible representation to the security officers or that the existing relationship was unstable. Local 1158 states that the Hearing Officer did not consider two areas of testimony in the transcript which, according to Local 1158, would on its face be sufficient to warrant setting aside the initial election.

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

1. The County of Essex is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees involved herein, and is subject to the provisions of the Act.

2. Local 1158, International Brotherhood of Electrical Workers, AFL-CIO, and the Essex County Employees Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. Local 1158 seeks to represent a unit comprised of security officers employed by the County. The County and the Association do not consent to an election in this unit asserting that these employees should not be removed from the overall unit comprised of all County employees represented by the Association.

4. The Hearing Officer found that in the negotiation and administration of the collective negotiations agreement the Association responsibly represented the interests of security officers. More specifically, the Hearing Officer found that the Association responded with assistance to those security officers who had received layoff notices in

January 1980 and responded to employees concerned about the payments of increments and disputed promotions. The Hearing Officer also concluded that the fact that employee newsletters were not distributed by the Association to non-dues paying members did not constitute irresponsible representation. The undersigned finds that the Hearing Officer properly analyzed the facts presented and adopts the Hearing Officer's findings and conclusions.

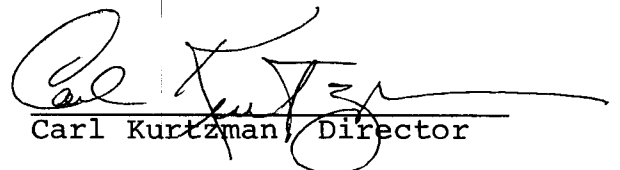
Regarding the exceptions filed by Local 1158, the undersigned observes that the Hearing Officer did consider evidence concerning the processing of grievances by the Association and noted that the Association had proceeded to arbitration concerning certain disputes. Local 1158 cites a statement in the transcript from which it draws the conclusion that the Association refused to process certain grievances because the grievant refused to pay dues to the Association. A full reading of the testimony reveals that the Association does process grievances whether the grievant is a member of the Association or not. Regarding this specific instance, the testimony reveals that the grievant stated that she "had a lot of friends and didn't need the Association." The President of the Association testified that he had advised the grievant to resolve her grievance independently. He further stated that had she returned and formalized her grievance in writing he would have assisted her.

Local 1158 also refers to testimony concerning the refusal of the Association to process the grievance of an individual who was being transferred. The testimony reveals that the President of the Association assessed the grievance and reasoned that its formalization would possibly do more harm than help to the grievant and that, under the circumstances involved, the County could justify the transfer of the particular individual.

From the above the undersigned concludes that the Association did not irresponsibly represent the interests of employees in the processing of grievances. The Association's determination not to pursue certain grievances under its contract with the County was based upon individual consideration of the merits of the particular grievance. It has not been demonstrated that the Association refused to pursue grievances for the purpose of retaliating against security officers who were not dues paying members of the Association.

Accordingly, the undersigned affirms the Hearing Officer's conclusions that the Association has not provided irresponsible representation to the employees herein. Further, it has not been demonstrated that the existing relationship is unstable. Therefore, the undersigned dismisses the instant Petition.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: August 18, 1980
Trenton, New Jersey

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-and-

LOCAL 1158, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
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Docket No. RO-80-93

Petitioner,

-and-

ESSEX COUNTY EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

A Commission Hearing Officer, in a representation proceeding, recommends the dismissal of a petition to sever the security officers and senior security officers from an existing overall County unit. After review of the record, the Hearing Officer concludes that the incumbent Association has not failed to responsibly represent the security personnel.

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 Proceedings 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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For the Intervenor
Thomas E. Durkin, Jr., Esq.
(Thomas E. Durkin, III, Esq.)

HEARING OFFICER'S REPORT
AND RECOMMENDATIONS

On November 8, 1979, Local 1158, International Brotherhood of Electrical Workers, AFL-CIO (the Petitioner) filed a timely Petition for Certification of Public Employer Representative, supported by an adequate showing of interest, with the Public Employment Relations Commission (the Commission) seeking certification as the exclusive representative for collective negotiations of a unit of employees

employed by the County of Essex (County). The Petitioner seeks to sever all security officers employed by the County from a unit currently represented by the Essex County Employees Association (the Association).

Both the County and the Association maintain that the unit structure should remain unchanged. The existing unit is currently comprised of all County employees with certain specified exclusions.

Pursuant to a Notice of Hearing, a hearing was held before the undersigned Hearing Officer on April 15, 1980, in Newark, New Jersey, at which time all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. No briefs have been filed in this matter.

Upon the entire record, the Hearing Officer finds:

(1) The County of Essex is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the Act), is subject to its provisions and is the employer of the employees who are the subject of this petition.

(2) Local 1158, IBEW, AFL-CIO and the Essex County Employees Association are employee organizations within the meaning of the Act and are subject to its provisions.

(3) The Essex County Employees Association currently represents all security officers in its unit.

(4) The Petitioner seeks a unit including all security officers and senior security officers.

(5) The County and the Association have refused to consent to a secret ballot election among the security officers.

Accordingly there is a question concerning representation and the matter is properly before the Hearing Officer.

Background

The Essex County Employees Association was certified by the Commission in 1969 or 1970 to represent certain employees of the County of Essex. ^{1/} Currently, this unit includes the titles security officers and senior security officers, ^{2/} which are the subject of the instant Petition. ^{3/} There are 55 security officers and 16 or 17 senior security officers. ^{4/} Although disputed by the County, the President of the Association testified that there are 2,500 people in the unit. ^{5/}

Issue and Position of the Parties

The issue is whether or not the incumbent Association has provided responsible representation for the security officers.

The Petitioner alleges that there has not been responsible representation which warrants the severance of the security officers from the overall unit currently represented by the Association.

The County and the Association take the position that the unit structure should remain unchanged. Additionally, the County is concerned with overfragmentation of bargaining units in the County. ^{6/} The Association denies it has not provided responsible representation of the security officers.

^{1/} Tr. p. 103.

^{2/} Hereinafter, reference to security officers will include both titles.

^{3/} Tr. pp. 159-160.

^{4/} Tr. pp. 151-152.

^{5/} Tr. p. 129. On cross-examination, the President of the Association testified that the position of the County in recent negotiations was that the size of the unit was 1800 people. Tr. p. 147.

^{6/} See exhibit R-8.

Framework for Analysis

The Commission has favored the formation of negotiations units along broad-based, functional lines rather than by distinct occupational groupings. ^{7/} Particularly, the Commission has applied this policy in making unit determinations for units of county employees. ^{8/}

Furthermore, the Commission has established the standards for severance of employees from appropriate collective negotiations units. In In re Jefferson Twp. Board of Education, P.E.R.C. No. 61 (1971), the Commission stated:

The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to redefinition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter ignore that the existing relationship may also demonstrate its own community of interest.

Discussion

The instant matter involves the contention by the Petitioner that the incumbent Association has failed to provide responsible representation for security

^{7/} In State of N.J. v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974), the Supreme Court endorsed the Commission's adoption of the concept of broad-based, functional negotiating units. See also, In re State of New Jersey (Neuro-Psychiatric Institute, et al), P.E.R.C. No. 50 (1971), In re Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971), In re Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972), and In re State of New Jersey (Prof. Association of N.J. Department of Education, et al.) P.E.R.C. No. 68 (1972).

^{8/} See In re Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 49 (1971), and In re Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972). See also In re Union County Board of Chosen Freeholders, E.D. 49 (1974) and In re Union County Board of Chosen Freeholders, E.D. No. 68 (1975).

officers. In support thereof, the Petitioner relies on (1) the lack of knowledge by the security officers that the Association was their exclusive representative for collective negotiations, and (2) the Association's failure to process and/or indifference toward grievances concerning the security officers. Considerable testimony was taken with respect to layoff notices affecting security guards.

Regarding the lack of knowledge of the Association, all four witnesses who testified on behalf of the Petitioner claimed that they had never heard of the Association or knew that an association represented them for collective negotiations. Additionally, they had never seen a copy of the agreement between the County and the Association.

In response the President of the Association testified that the Association publishes newsletters ^{9/} to advise its unit members of collective negotiations matters. While the newsletter is only sent to dues paying members of the Association, additional free copies are distributed in a few locations around the County for anyone who desires a copy. ^{10/} The newsletters also advise employees of Association meetings and has published copies of collective negotiations agreements.

While well-informed unit members may be a laudable goal, the failure to do so is not tantamount to a failure to responsibly represent employees. The majority representative is responsible for representing the interests of all employees without discriminating on the basis of organizational membership. The fact that the newsletter is not distributed to non-members is not discriminatory. This "discriminatory" conduct is not the type of discrimination which leads to a finding that the incumbent Association has not provided responsible representation. Responsible representation is measured by the conduct of the Association in negotiating collective bargaining agreements and in processing grievances.

The Petitioner also attempted to show that the Association has not dili-

^{9/} See Exhibit I-5.

^{10/} Tr. p. 117.

gently processed grievances presented by security officers. Specifically, the witnesses for the Petitioner testified that the President of the Association advised them that the Association could do nothing about layoff notices received by security officers in January, 1980. Yet the Association presented documents which appear to contradict this testimony. ^{11/} The Association prepared a form letter for those employees who had received layoff notices to send to the Civil Service Commission to perfect their appeal rights. In fact, one of the witnesses who testified that she did not see the form letter ^{12/} admitted that she took some of those letters for distribution to security officers at Geriatrics. ^{13/} The undersigned must credit the testimony of the President of the Association concerning the layoff notices and the response of the Association to those notices. The Petitioner seeks a conclusion that the Association failed to respond adequately to needs of these employees. Yet, it appears that the Association did respond, and certain security officers followed the advice of the Association. ^{14/} The Association cannot be expected to force employees to fill out form letters.

The Petitioner also attempted to show a lack of action by the Association concerning incremental and promotional grievances. In both instances, it is alleged that the Association refused to act. Yet the Association did file grievances concerning the failure of the County to pay increments on January 1, 1980. With respect to the disputed promotions, certain security officers were advised that they had a restricted appointment under Civil Service Rules. The Association then advised these security officers that this restriction could be removed by taking an examination. If the restriction was not removed, the security officer would not be eligible for a promotion. The Association could not negotiate a change in

^{11/} See Exhibits I-1, I-2, I-4A, I-4B, I-4C.

^{12/} Tr. p. 54.

^{13/} Tr. p. 66.

^{14/} See Exhibits I-4A, I-4B, I-4C.

Civil Service Laws and Rules. ^{15/}

In analyzing the entire record, the undersigned finds that the Association has not failed to provide responsible representation. The Association has processed grievances, has gone to arbitration concerning a dispute involving a security officer ^{16/} and has lent assistance to security officers with disputes involving the Civil Service Commission. It appears that the security officers have been disappointed with the results arising from their problems or grievances. While the results may have been unsatisfactory, it does not lead to the conclusion that inadequate representation was provided by the Association.

Recommendation

Based upon the entire record, the undersigned recommends that the instant Petition be dismissed.


Bruce D. Ledy
Hearing Officer

DATED: June 20, 1980
Trenton, New Jersey

^{15/} State v. Supervisory Employees Association, 78 N.J. 54 (1978).

^{16/} See Exhibit I-3.