

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE

Public Employer

and

TEAMSTERS LOCAL NO. 97

Petitioner

Docket No. R-27

and

NEW JERSEY CIVIL SERVICE ASSOCIATION,  
ESSEX COUNCIL NO. 1

Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the City of Orange, a hearing was held on May 19, 1969 before ad hoc Hearing Officer Daniel Kornblum at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and argue orally. Thereafter, on August 12, 1969, the ad hoc Hearing Officer issued a recommended Decision and Direction of Election. Exceptions have been filed by New Jersey Civil Service Association, Essex Council No. 1 and the City of Orange to the Hearing Officer's recommended Decision and Direction of Election. The Commission has considered the record, the Hearing Officer's recommended Decision and Direction of Election and the Exceptions and on the facts in this case, the Commission finds:

1. The City of Orange is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. Teamsters Local No. 97 and New Jersey Civil Service Association, Essex Council No. 1 are employee representatives within the meaning of the Act.

The Public Employer questions the employee representative status of the Petitioner. A representative is defined by Section 4 (e) of the Act to mean: "...any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them". There is no requirement a representative for purposes of this section purport to represent a majority of employees in an appropriate unit.

In the instant case, the Commission has satisfied itself with the sufficiency of a "showing of interest", or designations authorizing an employee organization to represent such employees, with respect to both employee organizations. The submitted "showing of interest" is an administrative requirement to enable the Executive Director of the Commission to determine initially whether further proceedings are warranted. Accordingly, there is no requirement the Petitioner submit proof of selection by a majority of employees in an appropriate unit to qualify as a "representative" within the meaning of Section 4 (e) of the Act.

3. The Public Employer having refused to recognize any employee representative as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.
4. The Hearing Officer's recommended Decision and Direction of Election, attached hereto and made a part hereof, is adopted, except as modified herein.

5. The issue posed before the Commission is whether there exists a community of interest among the employees of the Department of Public Works to warrant a finding of an appropriate department-wide unit within the meaning of the Act.

The record reveals the administrative functions of the City are allocated and assigned in addition to the Department of Public Works to a Department of Administration, Department of Finance, Department of Law, Office of Planning and Development, Police Department, Fire Department and Department of Health, Recreation and Welfare. Each of the above has a separate director and identifiable function in the overall operation and administration of the City government. There is no evidence of any functional integration among the Department of Public Works and the other departments, or relationship or contact with the other employees of the City, other than the performance of maintenance on Police and Health, Recreation and Welfare vehicles by three mechanics and a laborer and cleaning of recreation areas used by the Department of Health, Recreation and Welfare by several employees of the Department of Public Works. The Director of the Department of Public Works testified:

Q. Are workers under the jurisdiction of your department ever assigned to other departments in your City?

A. No, Sir.

Q. In other words, they are assigned to your department and they come exclusively under the jurisdiction of that department. Is that right?

A. Yes, Sir.

Thus, in actual practice, there has been little, if any, interchange of employees among the several departments. In addition, the employees are physically and geographically separated in specific garages and

installations from other employees of the City.

The employees of the Department include mechanics, meter readers, laborers, truck drivers, traffic maintenance men, water treatment plant employees and five office clerical employees. There are no classifications of laborers in any other department. The only other department where there are mechanics and truck drivers is the Fire Department and one employee identified as a dog catcher who drives a small truck in the Department of Health, Recreation and Welfare. These drivers, it should be noted, do not perform functions normally associated with that of a "truck driver". Therefore, there is a homogeneity of skills, duties and working conditions peculiar to the Department of Public Works. There is no evidence employees elsewhere have comparable functions or duties.

The Commission finds the existence of a central supervisory hierarchy through the Director who exercises control of operations and functions of the Department of Public Works. The employees, therefore, look to the individual supervisors and department head for their day-to-day supervision. Since the Department of Public Works has its own administration and is a self-contained division of the City government, its employees have a "community of interest".

Essex Council No. 1 argued for a unit to include all City employees excluding the uniformed services. The Hearing Officer found as appropriate the unit sought by the Petitioner, which excludes office clericals. Essex Council No. 1 did not contend at the hearing for the inclusion of office clericals in the unit sought by the Petitioner but now excepts

to the Hearing Officer's exclusion of office clericals from a department-wide unit. This issue is raised for the first time in the Exceptions filed by Essex Council No. 1. Inasmuch as the issue of the exclusion of office clericals from the unit sought by Petitioner was not timely raised at the hearing, Essex Council No. 1 is thereby foreclosed from litigating it in its Exceptions. Furthermore, no cogent reason exists in the record as a whole to warrant the inclusion of the office clericals. Accordingly, the Commission finds that the office clericals are excluded from the unit found to be appropriate.

6. Based upon all of the above, and after having given due regard for the community of interest among the employees concerned, the Commission finds that an appropriate collective negotiations unit is: "All employees of the Department of Public Works of the City of Orange, but excluding managerial executives, office clerical employees, policemen, professional employees, craft employees and supervisors within the meaning of the Act."
7. The Commission directs that a secret-ballot election shall be conducted among the employees in the unit found appropriate. The election shall be conducted as soon as possible but no later than thirty (30) days from the date set forth below.

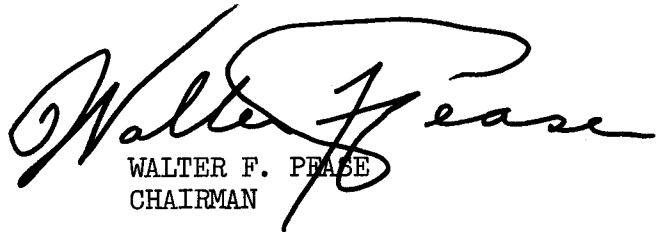
Those eligible to vote are employees set forth in Section 6 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. 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.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Teamsters Local 97; New Jersey Civil Service Association, Essex Council No. 1; or neither.

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 COMMISSION



WALTER F. PEASE  
CHAIRMAN

DATED: November 5, 1969  
Trenton, New Jersey

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

-----X  
In the Matter of the Representation :  
Dispute between :  
:  
CITY OF ORANGE, :  
:  
Employer :  
:  
and :  
:  
TEAMSTERS, LOCAL NO. 97, : Docket No. R-27  
:  
Petitioner, :  
:  
and :  
:  
NEW JERSEY CIVIL SERVICE ASSOCIA- :  
TION, ESSEX COUNCIL NO. 1, :  
Intervenor. :  
-----X

DECISION AND DIRECTION OF ELECTION

APPEARANCES: For Petitioner: HOWARD A. GOLDBERGER, Esq.  
Attorney;  
For City of Orange: JOSEPH L. MAGRINO, Esq.  
Director of Department of  
Law and City Attorney;  
For Intervenor: JACOB FOX, Esq.  
(Fox, Yanoff & Fox, Esqs.)  
Attorneys

DANIEL KORNBLUM, HEARING OFFICER:

By order of the New Jersey Public Employment Relations Commission ("Commission") dated April 16, 1969, a hearing was directed to be held "concerning the matter of representation and related matters concerning claims of representation made with respect to employees of the City of Orange, Department of Public Works". For that purpose, the undersigned was designated by the Commission as its ad hoc Hearing Officer "with all powers conferred upon the Commission by Chapter 303, N. J. Public Laws of 1968, in connection with the discharge of the duty or duties so delegated to him".

In pursuance of the order, a hearing was held before the undersigned on May 19, 1969 in Newark, New Jersey, at which all interested parties who appeared were given full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence. Upon the basis of the entire record before him, the undersigned Hearing Officer finds and concludes as follows:

#### The Parties

The petitioner, Teamsters, Local No. 97, which instituted this claim of representation, is concededly a labor organization which exists for the purpose, among others, of representing public employees and is a "representative", as that term is defined in the New Jersey Employer-Employee Relations Act (i.e., Chapter 303, L. 1968, hereinafter called the "Act").

The intervenor, New Jersey Civil Service Association, Essex Council No. 1, was organized and exists for the purpose of representing, among others, all non-uniformed civil service employees employed in Essex County and the municipal and other governmental subdivisions thereof. It, too, is a "representative" as defined by the Act.

The employer, City of Orange, is a municipal entity duly constituted under the laws of the State of New Jersey and is a "public employer" as that term is defined in the Act.

At the outset of the hearing, both the petitioner and the intervenor respectively produced for the inspection alone of the Hearing Officer authorization cards bearing signatures of affected employees in the unit claimed in sufficient number (each well in excess of 30%) to show their substantial representational interest in the matter. Since the request here is for an election by secret ballot under the auspices of the Commission, and no demand is made



for certification upon the basis of authorization cards, the cards as produced were not disclosed to the representatives of the employer for individual inspection.

#### The Appropriate Unit

The unit of employees alleged by the petitioner to be an appropriate negotiating unit for purposes of the Act consists of "all employees of the Department of Public Works excluding managerial executives, office employees, professional employees and supervisors having the power to hire, discharge, discipline, or to effectively recommend the same". The employer challenges the appropriateness of such a unit, insisting that the only appropriate unit should comprise all the non-uniformed rank and file personnel in its employ. It maintains that a negotiating unit confined alone to employees of its Department of Public Works is to "fragmentize" what is now (and ever since the inception of the Mayor-Council form of government for the City) administratively a city-wide unit of non-uniformed civil service personnel, all under the executive aegis of the Mayor of the City.

The intervenor, too, takes the position that the more appropriate negotiating unit should be a city-wide one of the non-uniformed personnel. However, it still asks to be represented on the election ballot in the event a unit confined to the employees of the Department of Public Works is found to be an appropriate one.

The proof in the record makes clear that the Department of Public Works is functionally a self-contained subdivision of the City government, with little or no employee interchange with any other department or subdivision of that government. It is chiefly charged with the maintenance of City streets and structures, including its water and sewage system. For this purpose it employs

laborers, truck drivers, operators of heavy motor equipment, mechanics, water repairmen, and meter readers. The Director of the Department, an appointee of the Mayor, himself testified that while there is employee interchange within the department when required, there is no such interchange with "other departments in the City".

Apart from the Police and Fire Departments (both of which admittedly negotiate as separate units), the Department of Public Works is far and away the largest departmental employer in the City. It employs from 80 to 85 employees year round. Exclusive of Police and Fire Departments (accounting together for some 182 employees), the number of employees in the Department of Public Works is more than the total employment of all the other departments combined (approximately 60 employees).

The Act sets forth no specific criteria for determining the appropriate negotiating unit other than the provisions that (1) it "shall be defined with due regard for the community of interest among the employees concerned" (Sec. 34:13A-53), and (2) as a rule shall not include "both supervisors and nonsupervisors" and, unless separately approved by appropriate vote, the commingling of "professional and nonprofessional employees" or "craft and noncraft employees" (Sec. 34:13A-6, subd. (d)).

The record makes abundantly clear that both by the statutory standards as well as those long recognized as normative in labor relations generally, the unit sought by the petitioner is an appropriate negotiating one for purposes of the Act. Accordingly, the Hearing Officer finds and concludes that the appropriate negotiating unit shall consist of all employees of the Department of Public Works of the City of Orange, exclusive of managerial and executive employees, office employees, professional employees, and supervisors and

foremen having the power to hire, discharge, discipline, or to effectively recommend the same.

Direction of Election

The undersigned hereby directs that an election by secret ballot shall be held under the supervision of the Commission, among the employees of the City of Orange, Department of Public Works, hereinabove found to be an appropriate negotiating unit under the Act, namely, all employees of the Department of Public Works who were on the payroll of that Department on the date of the hearing herein, May 18, 1969, excluding managerial and executive employees, office employees, professional employees, and supervisors and foremen having the power to hire, discharge, discipline, or to effectively recommend the same.

The ballot shall give the choice to such eligible employees whether they wish to be represented by the petitioner, the intervenor, or neither of said organizations, such choice to appear on the ballot in the order to be determined by the Commission. The notice of date, hours and place of the election shall be determined by the Commission in accordance with its rules and regulations, such election to be held as promptly as the Commission determines is possible after the service of this Decision and Direction of Election upon the parties.

/s/ Daniel Kornblum

DATED: August 12, 1969.