

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN  
Public Employer

and

Docket No. RO-439

LOCAL 11, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN, AND HELPERS OF AMERICA  
Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Township of Franklin, hearings were held before Hearing Officer James W. Mastriani at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Thereafter, on January 3, 1973, the Hearing Officer issued a Report and Recommendations. Exceptions have not been filed to the Hearing Officer's Report and Recommendations. The Commission has considered the record and the Hearing Officer's Report and Recommendations and on the basis of the facts in this case, finds:

1. Township of Franklin is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America is an employee representative within the meaning of the Act.
3. The Public Employer has refused to recognize the 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 Commission adopts the findings, conclusions, and recommendations of the Hearing Officer. In particular we agree with the Hearing Officer's treatment of the significance of past events as they bear upon the appropriateness of the unit found here. 1/ Originally, a broader unit of all blue and white collar employees was negotiated for by an independent employee association with the result that an agreement was executed in July 1969, to expire six months later in December 1969. Subsequently, a successor agreement was executed in March 1970 having a term for the remainder of 1970, but its effectiveness was clouded by the fact that a rival organization had sought representation rights for the same employees just prior to the execution of that successor agreement.

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1/ The reference is to those events as reported in the Commission's earlier decision, Township of Franklin, PERC No. 64.

The rival's right was contested and the Commission, upon finding that a question of representation had been properly raised, directed an election involving both the incumbent and the rival. As the Hearing Officer observes, that election never occurred because both the incumbent and its rival disclaimed further interest in representing the employees, and consequently the case was dismissed. In fact, the incumbent had, to all appearances, become defunct. Employees in the original blue and white collar unit have been without representation for more than two years, and representation prior thereto had been for a shorter period. The brief period of representation in the broader unit, the fact that such unit came into being by consent, the disclaimer, and the hiatus during which there has been no representation lead to the conclusion that the "history" of negotiations in the broader unit is not a persuasive or significant consideration in the resolution of the unit question here, i.e., the appropriateness of the more limited unit of blue collar employees.

5. Accordingly, the Commission finds the appropriate collective negotiating unit is: "All blue collar employees employed by the Township of Franklin including laborer I, laborer II, mechanics helper, mechanic, dispatcher, truck driver, equipment operator, water maintenance helper and custodian, excluding administrative, office clerical and technical personnel, managerial executives, craft employees, professional employees, policemen and supervisors within the meaning of the Act.

6. A secret-ballot election shall be conducted among the employees in the unit found appropriate. The election shall be as soon as possible but no later than thirty (30) days from the date set forth below.

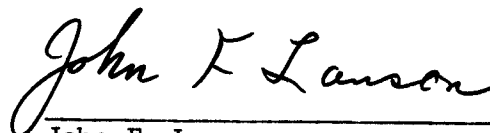
Those eligible to vote are employees in the unit described in paragraph 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military 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 Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America.

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 COMMISSION



John F. Lanson  
Acting Chairman

DATED: March 14, 1973  
Trenton, New Jersey

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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LOCAL 11, INTERNATIONAL BROTHERHOOD  
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AND HELPERS OF AMERICA

Petitioner

APPEARANCES:

John J. Hoagland, Esquire  
Township Attorney

Zachary Schneider, Esquire  
Attorney for Local #11

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition for certification of public employee representative was filed by Local 11, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO (hereinafter Petitioner or Local 11) on March 3, 1972, seeking certification in a unit of all blue collar employees of the Township of Franklin (hereinafter Public Employer or Township). 1/

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1/ In the petition the unit initially sought was described as to include: "road employees, water and sewer, engineers, sanitation, park and mechanics employed by the Department of Public Works of Franklin Township Somerset, New Jersey, excluding all other employees including office clerical and secretarial employees, administrative employees and supervisory employees." At the hearing the Petitioner moved to amend the petition item #6, Unit Description, to read "including all blue-collar employees employed by the Township of Franklin excluding clerical employees, policemen, professional employees and craft employees and supervisors within the meaning of the Act." The Public Employer does not object to the amendment, and as the amendment does not alter the employees petitioner seeks to represent, the Hearing Officer permits the above amendment. The motion to amend is prompted by a recent restructuring of the Township's departments. Reference is made to (footnote continued next page)

Pursuant to a Notice of Hearing dated May 3, 1972, corrected Notice of Hearing dated May 12, 1972, Order Rescheduling Hearing dated June 6, 1972, Order Rescheduling Hearing dated July 6, 1972, Order Scheduling Hearing July 24, 1972, corrected Order Scheduling Hearing July 25, 1972, Order Rescheduling Hearing August 8, 1972, formal hearings were held before the undersigned on July 20, 1972 and September 11, 1972 at which all parties argued orally, presented evidence, and examined and cross-examined witnesses, and given the opportunity to file briefs.

ISSUE:

The sole issue before the Hearing Officer is whether the unit sought by the Petitioner is an appropriate unit for the purposes of collective negotiations with "due regard for the community of interest among the employees concerned..." 2/ The Public Employer contends that the unit sought is inappropriate and could only be deemed appropriate through the inclusions of all non-supervisory employees of the Township. 3/

POSITIONS OF THE PARTIES:

Positions of the parties on the above issue are clearly indicated on the record. The parties stipulated that the employees in the unit sought are not professional employees, craft employees nor supervisors within the meaning of the Act. (Tr 26) It was further stipulated that foremen should be excluded from the unit sought herein and excluded from any election that might be directed in any unit deemed appropriate herein. (Tr 2 pg. 5) In addition, the parties stipulated that the Public Employer is not the

1/ (footnote continued from pg. 1)

public employer Exhibit No. 5, agreement between the Township of Franklin and Franklin Township Municipal Employees Association (1970) pg. 5 wherein the employees currently sought were employed in the Department of Public Works. After the restructuring the employees reside in three departments: Public Works, Administrative Services and Parks and Recreation.

2/ Chapter 303, Laws of 1968 (N.J.S.A. 34:13A-5.3 Sec. 7).

3/ For the purposes of defining the additional employees that the Public Employer contends should be included in the unit sought to render such unit appropriate, except for the school crossing guards, the Hearing Officer will term such employees as "white collar", a generic description commonly utilized to define office and clerical, administrative and technical employees.

employer of employees employed by the Franklin Township Sewerage Authority, a separate entity. (Tr 5) Neither party seeks a unit determination confined strictly to separate, individual Township departments. Each unit contention is township-wide in scope cutting horizontally across departmental lines. The central issue in dispute is one of composition rather than scope.

In support of its position, the Public Employer cites a prior negotiating relationship with an employee representative in a township-wide unit, 4/ and PERC Decision No. 64. 5/ In that decision an election was directed in a township-wide unit previously developed through the execution of a consent agreement for a secret-ballot election in a unit stipulated by the parties. 6/ These two documents depicting a previously developed unit buttress the Township's argument that a community of interest has already been exhibited in a blue and white collar unit. (Tr 2 pg. 7)

The Petitioner contends that the unit sought is an appropriate unit. (Tr 8) Specifically, petitioner seeks under the blue collar description the following classification of employees: laborer one, laborer two, mechanic's helper, mechanic, dispatcher, truck driver, equipment operator, water maintenance helpers, non-licensed engineers, and non-licensed surveyors (rodman and chainman) and custodians, employed in the Department of Public Works, Department of Parks and Recreation and Department of General Services.

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4/ Public Employer Exhibit No. 5 agreement between the Franklin Township Municipal Employees Association and the Township of Franklin, 1970.

5/ Commission Exhibit No. 2, PERC Decision No. 64, in the Matter of Township of Franklin, Somerset Co., N.J. and Department Store Drivers Local 177, Affiliated with I.B.T. and Franklin Township Municipal Employees, December 3, 1971.

6/ The Hearing Officer takes official notice of Franklin Township (Somerset County) and Franklin Township Municipal Employees Association, Docket No. R-10, filed January 24, 1969. In R-10, the parties executed a consent agreement by signing a stipulation on February 18, 1969 concerning the appropriate negotiating unit and all aspects of ground rules and procedures for secret ballot election.

DISCUSSION AND FINDINGS

The Township of Franklin is organized into the following departments: Magistrate, Township Attorney, Township Clerk, Township Auditor, Health, Finance, Public Works, General Services, Board of Assistance (Welfare), Code Enforcement, Police, and Parks and Recreation.

The Department of Public Works is comprised of Engineering, Water Operations, Streets, and Solid Waste Divisions. Within these divisions the Petitioner seeks Laborers I and II, Equipment Operators, Truck Drivers, Water Maintenance Helpers, Dispatcher, and Rodman and Chainman (non-licensed surveyors and non-licensed engineers).

The Department of Parks and Recreation has two divisions, Park Operations and Recreational Operations. Petitioner seeks Laborers I and II in the Parks Operation who essentially perform park maintenance and maintenance-repair of recreation facilities and equipment. (Tr 2, pg. 29)

The Department of General Services is primarily an administrative arm of the Township Manager. However, within the department are housed the Central Maintenance Shop and Building and Grounds divisions. In these divisions the Petitioner seeks Mechanics and Mechanics Helpers who perform maintenance and repair of Township vehicles and Custodians who maintain the Township offices.

The record indicates that blue collar employees do possess among themselves, an identifiable community of interest. 7/ The employees are all involved in the type of work activity which traditionally defines the "blue collar" employee. They all perform manual or physical labor at a skill level

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7/ The Hearing Officer in this discussion will reserve judgement on custodians, and rodman and chainman.

below that required of a craft employee, or for which a licensing or apprenticeship is required.

They are paid on an hourly basis as opposed to virtually all other Township employees who are paid on an annual salary. 8/ As hourly employees, they are required to punch a time clock, a requirement absent for salaried employees. For personnel assigned to night shift employment, a 5% wage differential is provided. The employees sought are provided with work uniforms and laundry service. Blue collar employees of the Township are employed on an 8:00 A.M. - 4:30 P.M. workday with one-half hour for lunch as opposed to the 8:30 A.M. - 4:30 P.M. workday for salaried employees who receive an hour for lunch. The blue collar work week is 40 hours vs. the 35 hour work week for white collar personnel. Blue collar employees are paid a premium rate for hours worked beyond their normal 40 hour work week at one and one-half times their normal hourly rate.

There is a virtual total lack of contact between blue collar employees and other employees of the Township. In the performance of their tasks the blue collar employees are closely in contact with each other. The central Township garage is the location where the blue collar employees report for work, regardless if he is employed within the Department of Public Works, Parks and Recreation or Administrative Services. Clericals who are employed

8/ Public Employer Exhibit No. 3, an Ordinance Amending the Comprehensive Salary Ordinance and Wage Plan for the Township of Franklin, Somerset County, New Jersey, and to provide for its Administration, (1972) pg. 2.

A part-time hourly salary scale is in effect for part-time, seasonal and temporary employees. Petitioner does seeks to represent employees who are employed on a part-time basis and who perform work identical to employees it seeks to represent. The record indicates that the employer hires high school and college students for a two month period to augment the labor force at primary construction seasons. (Tr 2 p. 11) The undersigned recommends that seasonal, temporary employees should be excluded from the unit. They receive none of the benefits afforded to permanent employees; no vacation, holiday pay, or health insurance protection. The record indicates that there are no part-time permanent employees within the classification sought except for seasonal employees.

in these departments report to the Township municipal building. The employees sought are supervised by Foremen in their respective departments within the central Township garage.

The record indicates there is little interchange or transfer among blue collar employees although there are occasions, due to the need of a particular skill or emergency situations where temporary work assignments has necessitated the temporary transfer of blue collar employees within the three departments involved. (Tr 2 p. 12-13)

The above factors, while indicating an identifiable community of interest among the employees involved, may not warrant a determination that the unit sought is an appropriate unit. The statute, as cited above, requires the appropriate unit to be determined "with due regard for the community of interest of the employees concerned." The undersigned feels that a finding of "community of interest" alone is not sufficient to determine a unit's appropriateness if the evidence shows the employer, at the highest level, could not deal effectively in collective negotiations. The evidence supports a finding that effective collective negotiations could result between the employer and a blue collar unit of employees. The blue collar employees share certain important terms and conditions of employment distinct from the remainder of Township employees. There is no evidence to indicate that negotiations with a township-wide blue collar unit would result in undue fragmentation of Township employees. To the contrary negotiations of terms and conditions of employment relating to the common interests of the employees involved has been accomplished at the employer's central level. In the past the record indicates that the Township has considered and negotiated certain terms and conditions of employment for blue collar employees separately from the remainder of employees.



Public employer exhibits No. 3 and No. 5 9/ clearly indicate that the blue collar hourly wage structure has been considered in the past separately from employees in the classified salary system (white collar employees) of the Township. Public employer exhibit No. 5, 10/ a 1970 collectively negotiated agreement for blue and white collar employees shows many areas where the employer has in the past negotiated terms and conditions of employment for blue collar employees within the larger township-wide unit; specifically in method of wage payment, hours of work, lunch hours, overtime benefits, holidays (for sanitation employees) uniforms, lockers, and grievance procedure.

The Hearing Officer therefore recommends, based on the entire record of this proceeding, that the unit sought herein is an appropriate unit for the purposes of collective negotiations with due regard for the community of interest of the employees concerned. 11/ The previous experience with a township-wide unit of all non-supervisors is not persuasive to render the instant unit inappropriate or compel the Hearing Officer to adopt a like determination.

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9/ Public Employer Exhibits No. 3 and No. 5, supra. see footnotes 4 and 8.

10/ The Hearing Officer notes that this agreement, the last agreement between the Township and the Franklin Township Municipal Employees Association was signed by the parties on April 24, 1970 and did not serve as a bar to a petition filed in the same unit in March of 1970. There are no further agreements to indicate an extension of negotiations in the blue and white collar unit after 1970.

11/ The undersigned finds custodians should be included in the blue collar unit. While custodians are salaried, their duties, including the maintenance of buildings are similar in nature with the other blue collar employees to warrant their inclusion. Petitioner seeks rodman and chainman. The Hearing Officer recommends their exclusion. Their duties including drafting and surveying in the engineering division, of a more technical nature, lead the undersigned to recommend their exclusion from blue collar employees. They are salaried, report to the municipal building and work closely with a chief engineer and various clerical personnel. A similar finding of exclusion is made with respect to school crossing guards who have little community of interest with blue (footnote continued next page)

The persuasiveness of the historical argument would be more compelling had such history been demonstrated to have existed in a continuous fashion immediately preceding the instant petition. In such case the question of severance would be presented as an element in determining the appropriateness of the blue-collar unit. In P.E.R.C. No. 64, unit determination was not an issue. The central issue was whether formal bars existed at the time the petition was filed in that case. The unit sought was identical to the unit previously developed pursuant to a consent agreement. The election directed in that case did not occur. The Executive Director honored the Petitioner and Intervenor's requests to withdraw their names from the ballot as they disclaimed any interest in representing employees in the township-wide unit. Further, no one here seeks to represent this prior unit of employees previously disclaimed by its previous negotiating representative.

The Commission has found appropriate in prior cases an employer-wide unit in scope, composed of all blue collar employees. 12/ In Bergen, the Commission was not persuaded that the blue collar county-wide unit was inappropriate by virtue of the many fringe benefits the blue collar employees shared with white collar employees.

#### RECOMMENDATION

The undersigned respectfully recommends the above findings and recommends based on the entire record, an election be directed pursuant to


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11/ (footnote continued from pg. 7)  
collar employees. They are employed in the Police Department, work during the school year, are assigned work by the Chief of Police, are guided by the school calendar during their employment and have no contact whatever with blue collar employees.

12/ Bergen County Board of Freeholders, P.E.R.C. No. 69. June 21, 1972.  
Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58, August 11, 1971.

the Public Employment Relations Commission's Rules and Regulations in the appropriate unit consisting of: "All blue collar employees employed by the Township of Franklin excluding administrative office and technical personnel, supervisors within the meaning of the Act, professional and craft employees, policemen and all other employees of the Township of Franklin."

RESPECTFULLY SUBMITTED

  
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James W. Mastriani  
Hearing Officer

DATED: January 3, 1973  
Trenton, New Jersey