

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

LOCAL 518, NEW JERSEY STATE MOTOR
VEHICLES EMPLOYEES UNION, AFL-CIO
and LOCAL 195, INTERNATIONAL FEDERA-
TION OF PROFESSIONAL AND TECHNICAL
ENGINEERS, AFL-CIO,

Docket No. CU-76-13

Petitioner,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIA-
TION/NEW JERSEY STATE EMPLOYEES
ASSOCIATION,

Intervenor.

SYNOPSIS

The Commission grants a request for review filed by the New Jersey Civil Service Association/ New Jersey State Employees Association regarding a clarification of unit proceeding. In addition to disputing the decision of the Director of Representation regarding the appropriate unit placement of two disputed titles, the Associations argued that the use of a clarification of unit proceeding to remove titles from one unit and place them in another unit was potentially disruptive and therefore inappropriate. The Commission adopted the Director's determination that the community of interest of the disputed titles resides with employees in the inspection and security unit rather than the unit represented by the Association and furthermore that, under the circumstances of this case, a clarification of unit proceeding is the appropriate vehicle for accomplishing this result.

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Docket No. CU-76-13

Petitioner,

Docket No. CU-76-11

-and-

NEW JERSEY CIVIL SERVICE ASSOCIA-
TION/NEW JERSEY STATE EMPLOYEES
ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer, Honorable John J. Degnan,
Attorney General (Mr. Melvin E. Mounts, Of Counsel)

For the Petitioner, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld, Of Counsel)

For the Intervenor, Fox and Fox, Esqs.
(Mr. Richard H. Greenstein, Of Counsel)

DECISION ON REQUEST FOR REVIEW

A Petition for Clarification of Unit was filed with the Public Employment Relations Commission by Local 518, New Jersey State Motor Vehicles Employees Union, AFL-CIO and Local 195, International Federation of Professional and Technical Engineers, AFL-CIO (the "Locals") with respect to several titles which they claimed should be included in the unit represented by the Locals. Shortly

before that Petition was filed, the New Jersey Civil Service Association/New Jersey State Employees Association (the "Association") had filed a Petition for Clarification of Unit (Docket No. CU-76-11) with the Commission with respect to other disputed titles. Ultimately, the parties were able to agree upon the unit placement of each of the disputed titles with the exception of the Environmental Technician and Driver's License Examiner positions. Hearings were held on September 30, 1977 and June 13 and 14, 1978 involving the disputed titles. At the conclusion of the hearing, the parties submitted letter memoranda to the Hearing Officer. On May 18, 1979, the Hearing Officer issued her Hearing Officer's Report and Recommendations. She recommended that the disputed titles be added to the unit represented by the Locals. This recommendation was based largely upon her conclusion that the Environmental Technicians and Driver's License Examiners shared a community of interest with the employees in the Inspection and Security Unit as they are involved with the enforcement of laws, rules, and regulations of regulated industries and activities.

The Association filed exceptions to the Hearing Officer's Report and Recommendations on June 8, 1979. These exceptions disputed the conclusions of the Hearing Officer that the disputed titles shared a community of interest with other employees in the Inspection and Security Unit. In the alternative, the Association argued that the Environmental Technicians should be placed in the Professional Unit which is also represented by the Association because the duties of these employees are professional duties.

The Director of Representation issued his decision in this matter, D.R. 80-8, 5 NJPER ____ (¶ ____ 1979) on September 28, 1979. His review of the evidence including the Hearing Officer's Report and Recommendations, the transcript and the exceptions led him to adopt the Hearing Officer's recommendations. He concluded that the disputed titles do share a community of interest with employees in the Inspection and Security Unit and he clarified that unit to include those employees. He specifically rejected the contention of the Association that the Environmental Technicians are professional employees.

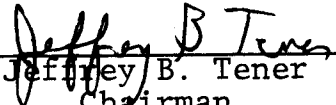
The Association filed a request for review with the Commission on October 11, 1979. This request was supplemented by a letter dated October 19, 1979. In addition to repeating its arguments regarding the community of interest of Environmental Technicians and Driver's License Examiners, the Association argued that this case raises an important policy issue. The Association contends that it would be disruptive of a long-standing relationship to permit the disputed titles to be removed from the Administrative and Clerical Unit and placed in the Inspection and Security Unit through a clarification of unit proceeding. The Association also requested oral argument before the Commission.

The Commission granted both the request for oral argument and the request for review. See N.J.A.C. 19:11-8.1 et seq. Initially, we note that the Director was cognizant of the potentially disruptive effects associated with the filing of clarification of unit petitions. Therefore, he noted the circumstances and timing

surrounding the filing of this petition and concluded that under the present circumstances the unit should be clarified.

We agree with the Director that while the filing of a Petition for Clarification of Unit is not appropriate in all circumstances, it was the appropriate representation procedure in this case. Similarly, we agree and adopt his determination that the record developed in this proceeding establishes that both the Environmental Technicians and the Driver's License Examiners share a community of interest with the employees in the Inspection and Security Unit. Therefore, we hereby affirm the decision of the Director of Representation in this matter.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp, Newbaker and Parcels voted for this decision. None opposed.

DATED: Trenton, New Jersey
December 4, 1979
ISSUED: December 5, 1979

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

In the Matter of :
:
STATE OF NEW JERSEY, :
Public Employer, :
-and- :
:
N.J. CIVIL SERVICE ASSOCIATION/NEW JERSEY :
STATE EMPLOYEES ASSOCIATION, :
Petitioner, :
-and- :
:
LOCAL 195, I.F.P.T.E., :
Intervenor. :
----- :

Docket No.
CU-76-11

In the Matter of :
:
STATE OF NEW JERSEY, :
Public Employer, :
-and- :
:
LOCAL 195, I.F.P.T.E., :
Petitioner, :
-and- :
:
N.J. CIVIL SERVICE ASSOCIATION/NJ :
STATE EMPLOYEES ASSOCIATION, :
Intervenor. :

SYNOPSIS

A Commission Hearing Officer in a clarification of unit proceeding recommends that the titles of Environmental Technician and Driver's License Examiner be clarified into the State Inspection and Security Unit because they are involved with the enforcement of laws, rules and regulations of regulated industries and activities. The titles were clarified out of the State Administrative and Clerical Unit because their duties are not basically administrative or clerical.

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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STATE EMPLOYEES ASSOCIATION,
Intervenor.

Docket No.
CU-76-11

Appearances:

For the Public Employer,
John J. Degnan, Attorney
General (Melvin E. Mounts, Deputy Attorney General)

For the Petitioner-Intervenor,
Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, Esq. of Counsel)

For the Petitioner-Intervenor
Fox and Fox, Esqs.
(Richard H. Greenstein, Esq, of Counsel)

HEARING OFFICERS REPORT AND RECOMMENDATIONS

On August 26, 1975, a petition was filed with the Public Employment Relations Commission (the "Commission") (Docket No. CU-76-11)^{1/} by the New Jersey Civil Service Association/New Jersey State Employees

Association (the "Association") seeking to resolve a question concerning the composition of the Administrative and Clerical Services Unit employees of the State of New Jersey (the "State") represented by the Association. On September 12, 1975, another petition was filed with the Commission (Docket No. CU-76-13^{2/} by Local 195, I.F.P.T.E. (the "Federation" or "IFPTE") seeking to resolve a question concerning the composition of the Inspection and Security Unit employees of the State represented by the Federation. On September 19, 1979, the Federation filed an amendment to petition CU-76-13 (C-4 in Evidence). An order Consolidating cases was issued and James F. Schwerin was appointed Commission Hearing Officer. A hearing was held on September 30, 1977.

Because of the unavailability of Hearing Officer Schwerin, the Commission appointed the undersigned Hearing Officer pursuant to N.J.A.C. 19:11-6.4 and additional days of hearing were held on June 13, 1978 and June 14, 1978 in Trenton at which all parties had the opportunity to examine witness, present evidence and argue orally.^{3/} All parties submitted letter memoranda in lieu of briefs subsequent to the hearing. Upon the entire record the parties stipulated and the Hearing Officer finds:

1. The State of New Jersey is a Public Employer within 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 proceeding.

2. The New Jersey Civil Service Association/New Jersey State Employees Association and Local 195, I.F.P.T.E. are employee representatives within the meaning of the Act and subject to its provisions.

^{2/} C-3 in evidence

^{3/} (The three days of hearing will be cited as follows: September 30, 1977-Vol. I-page number; June 13, 1978-Vol II-page number and June 14, 1978 - Vol III-page number.) See C-1 in Evidence.

3. CU-76-11 and CU-76-13 were filed to clarify a number of titles; however, the unit placement of all but two of the titles Environmental Technicians and Driver's License Examiners, was voluntarily resolved by all parties. CU-76-11 filed by the Association was dismissed by the Hearing Officer.^{4/}

4. The Environmental Technician titles are in the Administrative and Clerical Unit represented by the Association as well as the Driver License Examiner title. Hearings were held on CU-76-13 with the Federation as petitioner seeking to clarify the titles of Environmental Technician and Driver's License Examiner out of the Association's Unit and into the Federation's Unit.

5. The Environmental Technician titles in dispute consist of a series of titles -- Assistant Environmental Technician, Environmental Technician and Senior Environmental Technician. The parties agreed to concentrate on the title of Environmental Technician and that the Hearing Officer's decision on that title would be dispositive of the three titles.^{6/}

A question concerning the composition of a negotiations unit exists, and it is properly before the Hearing Officer for a Report and Recommendation.

^{4/} The Hearing Officer pointed out that the dismissal was not an adjudication of the petitioned-for titles in CU-76-11 and was being dismissed without prejudice to any future dispute if one were arise. Tr. I-II.

^{5/} See J-I in Evidence. Contract between the Administrative and Clerical Unit and the State of New Jersey.

^{6/} Tr. I-16, 17. It should be noted that the Seniors do not serve in a supervisory capacity to the other titles, nor was their any conflict raised in the exercise of their duties.

Position of the State

It is the State's position that the Environmental Technician job specifications and the duties of the job indicate that their community of interest lies with the Inspection and Security Unit.^{7/} The State described the Inspection and Security collective negotiations unit as follows:

"The essence of the Inspections and Security Unit is the element of law enforcement, that is, that it is a collection of employees who are dealing regularly with regulated industries or activities and are insuring that the appropriate laws and rules and regulations covering those activities for industries are being enforced."^{8/}

They point to the technical nature of the environmental technician's job in inspecting facilities and materials to see that environmental protection laws and rules and regulations are being enforced noting that that is primarily an inspection and not a clerical function.

On the other hand they note that the driver's license examiner title^{9/} is basically clerical in nature and that based on their job specifications and duties, that title should remain in the Administrative and Clerical Unit.

Position of the Federation

Relying on the State's definition of the Inspection and Security Unit, the Federation argues that the Environmental Technician should be placed in the unit they represent because they perform inspection work in regulated industries to insure compliance with statutes, rules and regulations.

^{7/} Tr. I-12.

^{8/} Tr. I-12.

^{9/} A driver's license examiner examines applicants and makes recommendations as to the issuance of motor vehicle and motorcycle licenses.
Tr. I-13.

They argue that the driver's license examiner should also be placed in the Inspection and Security unit because the basic function of their job is to give examinations which, they argue, is the essence of the Inspection and Security Unit.^{10/} The Federation also argues that driver's license examiners do not regularly perform clerical duties and relate their duties to those of the motor vehicle examiner who examines automobiles in the motor vehicle inspection station and who are in the Inspection and Security Unit.

Position of the Association

It is the Association position that both titles should remain in the Administrative and Clerical Unit which they represent because their unit encompasses "something more significant than just clerical duties" ^{11/}or alternatively they should be placed in the Professional Unit represented by the Association.^{12/}

Analysis and Recommendation

After careful consideration the entire record, the undersigned concludes that the Inspection and Security Unit should be clarified to include both the Environmental Technician titles and the Driver's License Examiner title.

I concur in the State's definition of the Inspection and Security Unit in that the unit is a collection of employees who are concerned with the enforcement of laws, rules and regulations of regulated industries and of regulated activities.

Environmental Technician

Environmental Technicians employed by the Department of Environmental Protection are involved in monitoring and inspecting the environmental

^{10/} Tr. I-14.

^{11/} Tr. I-15.

^{12/} Tr. I-16 as to driver's license examiner. See the Association's post hearing letter brief as to Environmental Technician.

quality of New Jersey's air, land and water. They are concerned with compliance with State and Federal environmental laws, rules and regulations.

For example, in the area of air pollution, the environmental technicians in responding to complaints, or in order to evaluate compliance with Department issued permits, inspect and evaluate sources of pollution^{13/} by using specialized control and testing equipment, recording devices and measuring instruments.^{14/} They maintain and calibrate the equipment they use and also equipment used in motor vehicle inspection stations^{15/} which measures automobile emissions. They check meters used by the Public Utilities Commission to evaluate smoke standards for diesel engines.^{16/} While they do not have the authority to issue cease and desist orders to offenders, they may recommend prosecution.^{17/} Environmental Technicians in Solid Waste Administration regularly inspect landfill site for compliance with the engineering design and operation violations.

The Commission must give due regard to community of interest in determining unit placement of employees.^{18/} In so doing it is helpful to examine other titles in the unit and the similarity of job duties among such employees.

Certain Civil Service job descriptions were submitted by the Association and the Federation. One title in the Inspection and Security Unit

13/ Tr. I-36 to 38.

14/ Tr. I-36, 38, 45 and Tr. II-31, 35, 42, 53.

15/ Tr. I-56.

16/ Tr. I-57.

17/ Association's post hearing letter memorandum p. 5, 6.

18/ State v. Prof. Association of New Jersey Department of Education
64 N.J. 231 (1974).

is Senior Investigator of Utilities. These employees inspect public movers of solid waste and solid waste utilities which duties are similar to the work performed by Environmental Technicians in the Solid Waste Administration.

Furthermore, I find their duties to be consistent with the State's definition of the Inspection and Security Unit. They inspect industries and activities regulated by environmental protection laws and regulations.

Based on the above, I am convinced that the Environmental Technicians share a community of interest with employees in the Inspection and Security Unit and should be clarified into that unit.

I might add, in response to the Association's claim that this title should be placed in the Professional Unit because their duties and functions are "scientific and skilled" and not investigatory in the nature of law enforcement,^{19/} that their duties require technical expertise, they do not require knowledge of an advanced type ordinarily acquired by professional employees through specialized study in an institution of higher learning or comparable experience.^{20/}

Driver's License Examiners

Driver's License Examiners work at driver qualification centers at various locations within the State of New Jersey, where licenses for the operation of motor vehicles and motorcycles are issued. The centers operate under the supervision of a Motor Vehicle Sergeant, with Motor Vehicle Inspectors, clerical employees and Driver's License Examiners.

^{19/} Tr. I-40, 53.

^{20/} See Local Corp., 200 NLRB 1019, 82 LRRM 1368 (1972). While a college degree is not necessarily dispositive of whether an employee is considered a professional employee, of the 13 Civil Service job descriptions submitted by the Association of titles in the Professional Unit to compare duties with those of Environmental Technicians, all required a college degree except one which required 6 years experience in the field which could be substituted on a year for year basis with college education. Of the eight job descriptions submitted by the Association of titles in the Administrative and Clerical Unit, none required a college degree,

When an applicant for a license goes to a driver qualification center the applicant's credentials are checked and determination is made as to what tests are to be administered, i.e., written, oral or foreign language.^{21/} The test is administered and scored and the applicant is given a vision test and an appointment is made for a road test where required.^{22/}

When the applicant returns on the appointed date, he/she appears at the road test site and is met by a driver's licence examiner who checks credentials (vehicle registration, insurance cards and driver's license of accompanying driver). The examiner then makes a check of the vehicle to see that it is in safe working order for the test.

The examiner then administers the road test, observes the driver and evaluates performances on such items as steering, turning, starting, backing and vehicle positioning.^{23/} The applicant is advised of the examiner's findings and returns to the center for the issuance of a license.

The primary duty of a driver's license examiner is to administer the road test.^{24/} Any of the employees at the driver qualification center can do the initial credential check and administer the tests at the center, including the Motor Vehicle Sergeant, the Inspectors, the Driver's License Examiners and the clerical employees. Clerical employees do only tests at the centers and other typing and clerical duties. Driver's License Examiners administer tests at the center when required; however, they primarily administer road tests.^{25/}

^{21/} Tr. II-61.

^{22/} Road test is waived for applicants with out of state licenses.
Tr. II-63.

^{23/} Tr. II-66.

^{24/} Testimony of Major John H. Wyckoff Assistant Chief, Enforcement Bureau, Division of Motor Vehicles and see S 15 in Evidence, N.J. Department of Civil Service job description.

^{25/} A driver's license examiner at the Newark station testified that at Newark Driver's License Examiners work inside one day a week because they are short one clerk and when they are fully staffed, they do only road tests.

While the State posits that the title Driver's License Examiner is basically clerical in nature, I find the extent of their clerical duties to be minimal and on an irregular and often temporary basis.

The Association points out that the Administrative and Clerical Unit is more than a clerical unit. The Association introduced a number of Civil Service job descriptions indicating the more inclusive nature of titles in their collective negotiations unit. Also the collective negotiations agreements between the State and the units in question which contain lists of all titles in the respective units were introduced into evidence.

While the Federation argued that the Civil Service descriptions were not relevant since many of them were undergoing scrutiny and were the subject of other solely on the State's definition of the units, I do find them helpful in further defining the unit. The State noted that while there may be a component of a person's job duty that differs from the Civil Service job specifications, the specifications generally accurately reflect an individual's duties and responsibilities.^{26/}

The Administrative and Clerical Services Unit is comprised of more than business office clericals; however, most non-office clerical job descriptions submitted to me described laboratory technician type jobs rather than inspection of regulated industries or activities.^{27/} Other

^{26/} Tr. III-44, Tr. III-10

^{27/} The title of Radiological Technician is in the Administrative and Clerical unit and this title works in a health lab performing radioactive tests on samples submitted while the title of Radiological Field Service Representative works in the field doing radiological investigations and is assigned to the Inspection and Security unit.

technical-type titles are listed in the contract, e.g., printing technician, research technician, industrial engineering technician, electroencephanographer, electronics technicians, etc.

It should also be noted that Motor Vehicle Examiners are in the Inspection and Security unit. The examiners inspect motor vehicles in the New Jersey State Inspection Stations. Inspection Stations frequently are in the same building as driver qualification centers. While it might be argued that the examination of a car is more technical than examination of its driver they are both inspecting activities of related laws and regulations.

Based on the above, since I find that Driver's License Examiners share a community of interest with other employees in the Inspection and Security unit, I recommend the title be clarified into that unit.^{28/}

Since both these titles are included in the current contract between the Administrative and Clerical unit and the State, and since I recommend that they should more properly fall within the scope of the Inspection and Security unit, I recommend that this determination become effective on the expiration of the Administrative and Clerical contract, June 30, 1979, when the Inspection and Security Unit contract also expires. In re Clearview Regional Board of Education, D.R. No. 78-2, 3 NJPER 323 (1977).

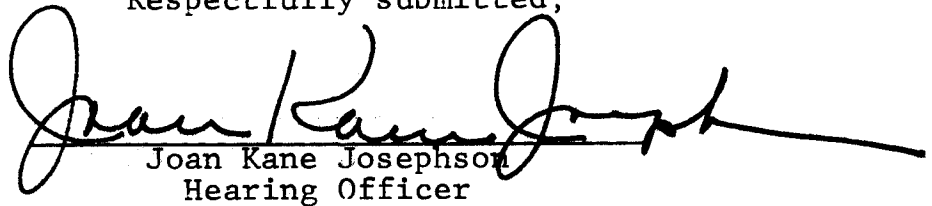
RECOMMENDATION

Based upon the entire record and for the above stated reasons, the undersigned recommends that the Inspection and Security Unit be

^{28/} The Association argues that these employees should alternately be placed in the Professional Unit; (I-16) however, based on the above discussion of the Professional Unit, I do not find their placement in that unit to be appropriate.

clarified to include the titles Assistant Environmental Technician, Environmental Technician, Senior Environmental Technician and Driver's License Examiner, at the expiration of their current contract.

Respectfully submitted,


Joan Kane Josephson
Hearing Officer

DATED: Trenton, New Jersey
May 18, 1979