

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN PINES COUNTY HOSPITAL

Docket No. R-119

Public Employer

and

INTERNATIONAL UNION OF OPERATING ENGINEERS  
STATIONARY LOCALS 68-68A-68B, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of Bergen Pines County Hospital, a hearing was held on November 10, 1969 before ad hoc Hearing Officer, Louis I. Rosenberg, Esquire, at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence, to argue orally, and to submit briefs. Thereafter, on January 2, 1970, the ad hoc Hearing Officer issued a Report and Recommendation. Exceptions have been filed by Bergen Pines County Hospital to the Hearing Officer's Report and Recommendation. The Commission has considered the record, the Hearing Officer's Report and Recommendation, and the exceptions and finds on the facts in this case:

1. Bergen Pines County Hospital is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. International Union of Operating Engineers, Stationary Locals 68-68A-68B, AFL-CIO is an employee representative within the meaning of the Act.

3. The Public Employer having 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.<sup>1/</sup>
4. The Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, is adopted, except as modified herein.
5. The Appropriate Unit: Petitioner seeks a unit of maintenance department employees, excluding licensed engineers, firemen (already covered by separate certification) and all other employees. The Employer contends that a unit of all its blue collar employees, including maintenance employees, is the appropriate unit. The Hearing Officer found appropriate a unit limited to the maintenance department, excluding watchmen and supervisors. The Employer excepts on the ground that the evidence does not support the Hearing Officer's conclusion that all those in the unit have duties within the area of traditional skills and crafts, that to the contrary, the evidence demonstrates the unique appropriateness of an all blue collar unit.  
  
The Employer operates a hospital in Paramus, New Jersey. Its Maintenance Department is administratively composed of the following classifications: senior maintenance repairman, maintenance repairman, medical electronics repairman, truck driver, laborer, groundskeeper, watchman, and Assistant

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<sup>1/</sup> At the hearing, testimony disclosed that there were approximately 42 employees in the Maintenance Department, contrary to Petitioner's original estimate of 30. The employer thereupon contended that Petitioner's showing of interest was inadequate. Section 19:11-7 of the Commission's Rules and Regulations provides that the adequacy of the showing of interest shall not be subject to collateral attack at a hearing. The Executive Director has investigated the showing of interest and concludes that it is adequate.

Maintenance Repair Foreman. The department is immediately supervised by Maintenance Repair Foreman Delime whom the parties agree is a supervisor within the meaning of the Act. Delime in turn reports directly to Maintenance Superintendent Cosmai who has overall responsibility for heating and maintenance operations.

The department is housed in the basement of Building No. 10 where work shops for the various department functions are set up, and locker facilities are maintained for department employees. The remainder of the building is used as living quarters for various hospital employees. The skills required in the Maintenance Department range from plumbing and electrical work to that of the laborer who shovels snow.<sup>2/</sup> There is interchange of job functions so that, for example, a maintenance repairman may assist in snow removal and a truck driver may assist a senior maintenance man in repair work. The record does not indicate that employees in the Maintenance Department interchange with other hospital employees. With respect to the watchmen, normally he would not work together with other maintenance employees; his hours of work are 6 P.M. to 6 A.M. Generally his duties are to make the rounds of the hospital, maintain security and guard against fires. He is not uniformed and does not wear a badge. There is no evidence that he possesses police type enforcement powers.

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<sup>2/</sup> While there appear to be craft-like skills, the record does not demonstrate the existence of true crafts in the sense of a long period of training or apprenticeship with advancement to journeyman status as one possessing a high degree of skill exercised with a minimum of supervision.

are not as significant as the fact that such are directed immediately to the common object of general maintenance. Moreover, regardless of an employees' specialty or classification, he may perform the work of other classifications depending upon the requirements of departmental tasks and the availability of manpower. There is no such interchange with employees outside the department. The Commission concludes that this separation along department lines, together with common objective, reflects a sufficient community of interest to support a finding that the departmental unit including watchmen is appropriate. In connection with this unit finding it should be observed that the record is virtually devoid of support for the Employer's unit contention. In fact the record does not indicate what other departments, classifications or persons would constitute an all blue collar unit nor why such would be appropriate.

As a subsidiary finding, the Hearing Officer concluded that the two Assistant Maintenance Repair Foremen were supervisors and excluded from the unit because they responsibly directed the work of other employees and because they substituted for Foreman Delime in the latter's absence. The record establishes that neither assistant has the authority to hire, discharge, discipline or effectively recommend regarding such action. On the other hand, the record does not indicate the frequency or duration of their substitutions, nor does it indicate that they assume the foreman's authority when substituting. The fact that the Assistant foremen may responsibly direct the work of others does not constitute them supervisors within the meaning of the Act. The further fact that they do not have the authority to hire, fire, discipline or effectively recommend such requires the conclusion that they are not supervisors and they should be included in the unit.

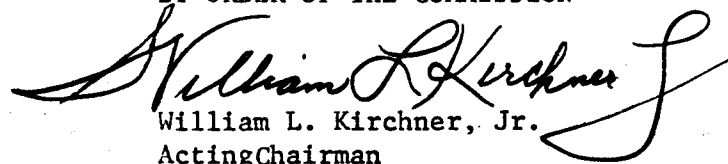
6. Accordingly, the Commission finds the appropriate collective negotiating unit is: "All maintenance Department employees including watchmen employed by the Bergen Pines County Hospital, Paramus, New Jersey but excluding all office clerical employees, managerial executives, professional employees, supervisors within the meaning of the Act and all other employees.

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 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 International Union of Operating Engineers, Stationary Locals 68-68A-68B, AFL-CIO.

BY ORDER OF THE COMMISSION

  
William L. Kirchner, Jr.  
Acting Chairman

Dated: March 30, 1970  
Trenton, New Jersey



APPEARANCES: ( continued )

For the Public Employer

Rufus R. Little, M.D., Superintendent of Bergen Pines County Hospital, Paramus, N. J.

Charles R. Clark, Assistant Superintendent of Bergen Pines County Hospital, Paramus, N. J.

Paul W. Smith, Observer for Bergen County, Hackensack, N. J.

For the Petitioner

Donato Benedetto, Business Representative, International Union of Operating Engineers, Local 68, 509 Orange Street, Newark, N. J. 07107

During the course of the Hearing, Counsel for the Petitioner, made a motion to amend the Petition paragraph 2.b. to read 42 instead of 30 as the number of employees in the unit. The Hearing Officer reserved Decision on said motion. Upon due consideration the Hearing Officer states his Decision to be as follows: Motion granted in all respects. The Petition paragraph 2.b. is deemed filed nunc pro tunc to read 42 as the number of employees in the unit, and not as heretofore. The Petition in its entirety, as amended, is respectfully referred to the Executive Director to determine the adequacy of the showing of interest and to make and state such findings thereon as he deems warranted, that being a function solely within the jurisdictional province of the Executive Director, as set forth in the Rules and Regulations of the Commission, Chapters 10 through 19, Subtitle C of Title 19 of the New Jersey Administrative Code.

Counsel for the Petitioner, sometime thereafter raised an Objection to the following question asked during Direct Examination of a witness Donato Benedetto, called on behalf of the Public Employer: "Are any of those cards representative of watchmen employees?" Transcript of Testimony, (page 49). Counsel for the Petitioner in stating the reasons for his Objection, requested the witness not to answer. The Hearing Officer treated that statement and request as a motion for instruction and

direction of and to the witness not to answer that question, reserved Decision on said motion and thereupon suggested that Counsel proceed further with the direct examination of the witness. Upon due consideration the Hearing Officer states his Decision to be as follows: Motion granted in all respects and the witness be deemed instructed and directed, nunc pro tunc, not to answer that question. That direct examination having been proceeded with without an answer to the question to which the objection was taken, there was continuity without interruption.

Brief submitted on behalf of the Public Employer by Michael J. Ferrara, Esq., County Counsel, by Edwin C. Eastwood, Jr., Esq., Assistant County Counsel, Of Counsel, was received by the Hearing Officer on the 6<sup>th</sup> day of December, 1969, having theretofore been filed by said Counsel with the Commission directly.

The Petitioner herein alleges that:

1. It seeks recognition and certification as the exclusive negotiating representative of all of the Public Employer's Maintenance Department employees.
2. It seeks a determination that aforesaid employees constitute an appropriate unit for purposes of collective negotiation.
3. An election should be held in said proposed unit.
4. The Public Employer should bargain with said unit for that purpose.

The Public Employer herein contends that:

1. The 30 employees, as alleged in the Petition, or the 42 employees as alleged in the then proposed amended Petition of the Petitioner,



to constitute the Public Employer's Maintenance Department employees, are not all of said Employer's employees in the unit that would constitute an appropriate unit.

2. A unit comprised of 30 or 42 employees of said Employer's Maintenance Department employees, is not an appropriate unit.

3. The Petitioner above entitled in a prior Petition which it filed with the Commission for Certification of Public Employee Representative, obtaining a Decision of the Commission in its favor following the Representation Proceeding Hearing thereon, Docket No. R-70, did thereby succeed in totally and completely distinguishing the Maintenance Department employees of above entitled Public Employer involved with Petitioner in aforesaid Representation Proceeding, from being considered as employees of - Craft Skills. Said Employer further asserts that aforesaid Petitioner now contends that the said Maintenance Department employees constitute an appropriate unit. In contrast, said Employer asserts that it previously contended and still contends that all of its blue collar employees, those in the unit established as appropriate in the said prior Proceeding, Docket No. R-70, as well as all others in its Maintenance Department together with all its other blue collar employees, constitute one appropriate unit.

4. The Petitioner, though obligated to do so, failed initially and finally to adduce evidence as to which employees are within the purported unit, the work they do and the crafts they do.

5. The evidence adduced by the Petitioner indicated a group of employees performing all different kinds of employment; that all such varied groups do not constitute a valid bargaining unit within the intent of Public Law 303.

6. The said Employer, whose Counsel requested and was granted leave

by the Hearing Officer to do so, submitted its Brief, wherein it asserted, in effect, that:

(a). The Petitioner, contrary to the intent of Public Law 303, seeks to become negotiating representative for all of the Employer's blue collar employees by fragmentation, irrespective of traditional skills, crafts, training background and common interest;

(b). The intent of Public Law 303 was to include within a negotiating unit, all employees who are identifiable within that group, not intending that a large number of small collective negotiating units be created rendering collective negotiations totally unworkable;

(c). The only valid collective negotiating unit within the intent of Public Law 303, would encompass all of the blue collar employees of said Employer; and that such evidence as was adduced during the Hearing, supported this contention.

It is noted that Employer's contention 3. (page 4, supra) that all of its Maintenance Department employees, constitute, together with all of its other blue collar employees, an appropriate unit, is contradicted by its contention 5. (page 4, supra) that the evidence adduced by the Petitioner in this subject Hearing, shows said Employer's Maintenance Department employees performing all different kinds of employment, that all such varied groups do not constitute a valid bargaining unit within the intent of Public Law 303; this last is contradicted by its contention 6.(c). (page 5, supra) that within the intent of Public Law 303, the only valid collective negotiating unit would encompass all of the Employer's blue collar employees, and that this contention was supported by the evidence adduced during this subject Hearing.

The issue as to "the adequacy of the showing of interest" by reason of the amendment of paragraph 2.b. of the Petition filed herein, to set forth "42" as the number of employees in the unit instead of the lesser number previously set forth therein, having been referred, by this Hearing Officer, to the Executive Director for Determination and Decision (page 2, supra); then, without prejudice to the extent and effect of such Determination and Decision, the sole remaining issue is that of "the Appropriate Unit".

The broad guidelines for determining the "appropriate unit" stated by the Legislature at the time it enacted the statute, Chapter 303 of the Laws of 1968, the governing statute, are provided in Section 7, thereof ( C. 34:13A-5.3 ) as follows:

"\*\*\* The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.\*\*\*"

Section 7, at its inception, also provides that

"\*\*\* public employees shall have,\*\*\* the right, \*\*\* to form, join and assist any employee organization \*\*\*; provided, however, that this right shall not extend to any managerial executive except \*\*\* nor, except where established practice, prior agreement or special circumstances, dictate to the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, \*\*\*."

There is a dispute wherein the Employee Organization by its Pet-

ition duly filed herein, seeks certification as Public Employee Representative for the Maintenance Department employees of this Public Employer, therein asserting that said employees constitute an appropriate unit for collective negotiating; and in the event of such a Determination, further seeks the holding of an election therein and a direction that the said Public Employer negotiate with that unit; and further asserting in said Petition that the Public Employer declined Petitioner's request for recognition as exclusive representative.

The Public Employer, among other assertions, emphatically disputes that its said employees constitute an appropriate unit for such purpose, nor does this Employer deny that it declined Petitioner's request for recognition as exclusive representative.

A plenary Hearing held as hereinabove set forth, was presided over by this Hearing Officer, during the course of which, Counsel for the respective parties made opening and closing statements, presented their several witnesses who, under oath, testified in direct and cross examination to which they were subjected, complete minutes were taken and thereafter transcribed, available to the parties if their counsel wished to obtain same from the stenographer. A Brief was submitted by Counsel for the Public Employer.

This Hearing Officer after full and complete consideration of the Petition, the testimony of the witnesses, arguments and statements of respective Counsel, all evidence and the entire aforesaid record herein and the Brief submitted by Counsel for the Public Employer, upon all of the foregoing, and having had due deliberation thereon, does find, as follows:

#### FINDINGS

1. All of the Public Employer's Maintenance Department employees at the Bergen Pines County Hospital, Paramus, New Jersey, are under

the supervision of the Maintenance Superintendent who has responsibility for all areas of heating and maintenance, and he is in charge of the Maintenance Department. He has general supervision over the employees in the following job categories:

- One Maintenance Repair Foreman;
- Two Assistant Maintenance Repair Foremen;
- Twelve Senior Maintenance Repairmen;
- Twenty-one Maintenance Repairmen;
- Three Laborers;
- Two Grounds Keepers;
- Three Truck Drivers;
- One Medical Electronic Repairman;
- One Chief Stationary Engineer;
- Six Stationary Engineers; and
- Five Watchmen.

2. This Commission in a Decision in a prior proceeding involving the same above entitled Petitioner and Public Employer, Docket No. R-70, has stated the foregoing Six Stationary Engineers constitute an appropriate collective negotiating unit, as the Engineers and Firemen employed in the boiler room of this Public Employer, excluding therefrom the One Chief Stationary Engineer as a supervisor. None of these employees are involved in subject Proceeding, Docket No. R-119, nor in any wise comprise any part of the number of employees in the Petition filed herein, as amended.

3. The One Maintenance Repair Foreman, upon concurrence of the parties and stipulation in the record, is classified as a supervisor and is excluded from inclusion in the proposed unit herein.

4. The two Assistance Maintenance Repair Foreman have full authority requiring the use of their independent judgment and which is other than of a merely routine or clerical nature in connection therewith, to responsibly direct the other Maintenance Department Employees, and in accordance with the established practice have actual authority over men and machines. They are of the supervisory class. They are often assigned by the Maintenance Repair Foreman to assume designated supervision of special areas of work involving specific Maintenance Department employees. The employee's supervisory status is determined by his duties, not his job title. The mere existence of the power to responsibly direct others, rather than the actual exercise of the authority, is sufficient. The fact that as much as 95% of their respective working time may be devoted to performing assigned maintenance work, and the fact that they fail to have the power to hire, discharge, discipline or to effectively recommend the same, does in no wise diminish the finding that they are supervisors. In the absence of the Maintenance Foreman they must function as supervisors. It is readily conceivable, that by reason of his absence, be it of short or long duration, whether because of his illness, disability or otherwise, they may be required to devote almost all, if not their entire time to their functions as supervisors. They are classified as supervisors and are excluded from inclusion in the proposed unit herein.

5. The Five Watchmen, whose duties of security include the duty to enforce against employees and other persons rules to protect the property of the Public Employer, and protect the safety of persons on the property, by the very nature of their duties, hours of employment and scope of activities, have duties essentially of a different nature

than the duties of the other Maintenance Department Employees. Although under the supervision of the Maintenance Superintendent, the Watchmen in effect neither share nor play any part in the community of interest found encompassing the Maintenance Department Employees. In rare times of an emergent or very urgent situation the Watchmen may be called upon to work in conjunction with the other Maintenance Department employees. This is a far cry from their regular duties, hours of employment, concerns, and interests that are so markedly different from those of said other employees. The duties of these Watchmen may involve duties other than such as are normally performed by Watchmen and such duties may be considerable, leaving only a small portion of their working time devoted to their duties as Watchmen; under established practice, such employees are classified as Watchmen. Watchmen are not normally Policemen nor armed guards (uniformed or not) although at times they may be so employed. To some extent the Watchmen's regular above duties of security and protection are duties also performed by Policemen. Some of the provisions (not heretofore quoted) of Sec. 7, supra, to the extent that duties of a Policeman are involved, exclude Policemen from an employee organization admitting employees other than Policemen to membership. The Five Watchmen, as has been conceded by the Petitioner, and for all of the above stated reasons, are classified as Watchmen and are excluded from inclusion in the proposed unit.

6. The twelve Senior Maintenance Repairmen, and the twenty-one Maintenance Repairmen, have duties of a responsible nature, requiring a degree of skill, the senior category requiring more skill and responsibility than the corresponding non-senior category. The duties are

of a responsible nature, involving the use of craft skills such as plumbing work, electronic, and such manner of maintenance repair work throughout the Hospital of the Public Employer. Mr. Crowley, one of the Senior Maintenance Repairmen, has regular normal duties, in which on a day to day basis, he performs the servicing of calls for maintenance and services. On occasion, in the absence of the foreman from the office, when there is an urgent maintenance request, he assigns maintenance (employee) personnel to respond and perform the required, maintenance service duties. He does not have the power to hire, discharge, discipline or to effectively recommend the same. There has been no evidence adduced indicative of any authority or power, allocated or granted to him to supervise or otherwise direct any of the men(employees) or machines of the Public Employer's Maintenance Department, other than of a merely routine or clerical nature, in connection therewith, and this only on the occasion of an urgent maintenance request in the foreman's absence from the office. He is not a supervisor, but a Senior Maintenance Repairman and is so classified.

7. Some of the Maintenance Repairmen are employees who are of a general maintenance grade, not having a particular skill in a field. They do such work as routine changing of light bulbs or the routine checking of preventive maintenance, checking motors, and the like. They work with the Senior Maintenance Repairmen and in some cases may look for promotion to the job category of these latter.

8. The one Medical Electronics Repairman has duties requiring routine maintenance work on various pieces of Hospital equipment-- mostly Medical equipment.

9. The Three Laborers in general have duties which require them



to work with and assist the Maintenance Repairmen on their assigned jobs.

10. The two Grounds Keepers have duties which are partly seasonal and during the summer season there are more of these employees; but there are at least two such employees the year round. Their duties basically are concerned with the lawn, flower beds, snow removal and the like. On many occasions they are assigned to work indoors, in which case they function very much like the Laborers.

11. The two Truck Drivers for the most part have hospital truck driving duties, although they could be using other vehicles, in collecting ground debris, garbage from outlying buildings, and transporting maintenance materials, as needed for maintenance, throughout the various hospital buildings.

12. There is a practical interchange of duties between the Laborers and Grounds Keepers, the former oftentimes being assigned to snow removal or work of an emergency nature. The Truck Drivers interchange duties with the Laborers and Maintenance Repairmen, the employees of the last two categories may be driving the trucks.

13. In accordance with established practice, even employees having dissimilar skills, but subject to the same working conditions, may have sufficiently similar negotiating interests to warrant placing them in one unit. Truck Drivers have not automatically been granted a separate unit. They have been placed in a unit with other employees, depending upon the degree of integration involved. Employees doing more than one type of work are usually placed in the unit to which they devote most of their time. An employee engaged in various jobs for his employer, may be included in the negotiating unit in which

he has sufficient interest in its working conditions, even if he devotes less than half his working time in work covered by that unit. In such circumstances, when other considerations are evenly balanced, so that any one of two or more units are equally appropriate, the wishes of the employees themselves, are important.

14. The Public Employer's forty-two Maintenance Department employees, consisting of twelve Senior Maintenance Repairmen, twenty-one Maintenance Repairmen, one Medical Electronics Repairman, three Laborers, two Grounds Keepers and three Truck Drivers, exclusive of the five Watchmen, the one Maintenance Repair Foreman, the two Assistant Maintenance Repair Foremen and the Maintenance Superintendent under whose general supervision they all fall, have readily ascertained duties in the areas of the traditional skills and crafts. They constitute a readily determinable homogenous grouping of integrated job categories, having a clear and pointed community of interest, whose members have similar kinds of training, vocational background and skills. They all, in a readily distinct line of supervision are under the direction of the Maintenance Superintendent. They are all centered in the Public Employer's Maintenance Shop, located in the basement of its building #10. This Shop is a rather large work area divided into sections, where different types of maintenance work is performed and where the different types of maintenance benches and repair tools are located, with different sections assigned for plumbing, sheet metal, carpentry, masonry, electronics and all the basic crafts of the maintenance trade. The Maintenance Repair Foreman, has a desk there, enclosed in a sort of semi-partition. The locker rooms of these Maintenance Department employees, of the above included categories, are located in that same area. Some of these employees

also live in the male employees' wing of that building #10, although many do not. Some of the Public Employer's Hospital Physicians also reside in the male employee's wing of building #10. All of the above included Maintenance Department employees are compensated on an hourly rate basis. The various categories work in conjunction with each other but not in conjunction with the Public Employer's other Hospital Departments, as the Food Service Department and the Laundry Department where the quality of skills of the employees thereof, are different than of the said Employer's Maintenance Department employees; and these latter employees are included within the proposed unit.

15. There has been no evidence adduced that any other employee organization seeks to represent the proposed unit.

16. There has been demonstrated an adequate showing of interest for exclusive representation for a proposed unit of thirty employees of the said Maintenance Department, prior to the amendment of paragraph 2b of the petition filed herein to read "forty-two" as the number of employees in the unit, nunc pro tunc. The Executive Director will make a Determination and Decision as to whether there has been demonstrated an adequate showing of interest for a proposed unit of forty-two employees. It is herein respectfully suggested, that consideration by this Commission of the hereinafter stated Recommendation to it by this Hearing Officer shall abide that Determination and Decision by the Executive Director.

17. There has been no evidence introduced to indicate there is a sufficient community of interest among all of the Public Employer's blue collar workers, nor that any specific request by them nor by any Employee Organization for Representation, has been made so as to const-

itute them a single collective negotiating unit. The Hospital is a highly integrated operation. However, the purpose and objective of the Statute, in this particular concern, is that which is most effective for the mutual benefit of the employees involved, looking toward achievement of the best possible atmosphere conducive to a high morale in the area of the Public Employer's relations with its employees, thereby creating highly qualified efficient employees being enabled to perform most effective service, thus in the long run redounding to the benefit of the Public Employer, its patients and the Taxpayer, and the interests and welfare of the public.

RECOMMENDATION:

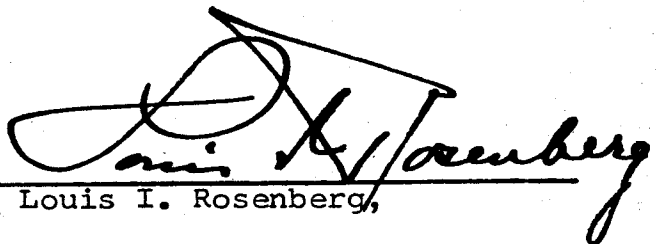
It is respectfully submitted to this Commission that its consideration of this Hearing Officer's Recommendation to it as hereinafter set forth, be deferred to abide the Determination and Decision of the Executive Director of this Commission, that there has been demonstrated an adequate showing of interest for a proposed unit of forty-two employees of that Maintenance Department, then and in that event, it is hereby recommended that:

1. This appropriate collective negotiating unit is all of the forty-two employees of the Public Employer's Maintenance Department at the Bergen Pines County Hospital, Paramus, New Jersey; but excluding office clerical employees, managerial executives, other craft employees, professional employees, policemen and supervisors, as defined in the Act, and all other employees.

2. A secret-ballot election be conducted at the earliest practicable date, among all of the twelve Senior Maintenance Repairmen,

the twenty-one Maintenance Repairmen, the one Medical Electronics Repairman, the three Laborers, the two Grounds Keepers and three Truck Drivers constituting a total of forty-two of the employees in the Public Employer's Maintenance Department aforesaid, who were employed during the payroll period immediately preceding the date of such Decision, if any, as may be rendered herein, by this Commission, including employees who did not work during that period because they were out ill, on vacation, or temporarily laid off, including those in the Military Service. They must appear in person at the polls in order to be eligible to vote. 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, are ineligible to vote. Those eligible to vote, shall vote on whether or not they desire to be represented by the International Union of Operating Engineers, Local 68, to be determined by a majority of the valid ballots cast.

January 2, 1970



Louis I. Rosenberg,

Hearing Officer

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3. The Public Employer having 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.<sup>1/</sup>
4. The Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, is adopted, except as modified herein.
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are not as significant as the fact that such are directed immediately to the common object of general maintenance. Moreover, regardless of an employees' specialty or classification, he may perform the work of other classifications depending upon the requirements of departmental tasks and the availability of manpower. There is no such interchange with employees outside the department. The Commission concludes that this separation along department lines, together with common objective, reflects a sufficient community of interest to support a finding that the departmental unit including watchmen is appropriate. In connection with this unit finding it should be observed that the record is virtually devoid of support for the Employer's unit contention. In fact the record does not indicate what other departments, classifications or persons would constitute an all blue collar unit nor why such would be appropriate.

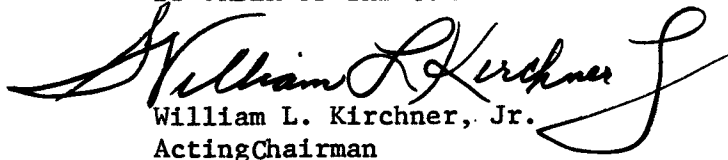
As a subsidiary finding, the Hearing Officer concluded that the two Assistant Maintenance Repair Foremen were supervisors and excluded from the unit because they responsibly directed the work of other employees and because they substituted for Foreman Delime in the latter's absence. The record establishes that neither assistant has the authority to hire, discharge, discipline or effectively recommend regarding such action. On the other hand, the record does not indicate the frequency or duration of their substitutions, nor does it indicate that they assume the foreman's authority when substituting. The fact that the Assistant foremen may responsibly direct the work of others does not constitute them supervisors within the meaning of the Act. The further fact that they do not have the authority to hire, fire, discipline or effectively recommend such requires the conclusion that they are not supervisors and they should be included in the unit.

6. Accordingly, the Commission finds the appropriate collective negotiating unit is: "All maintenance Department employees including watchmen employed by the Bergen Pines County Hospital, Paramus, New Jersey but excluding all office clerical employees, managerial executives, professional employees, supervisors within the meaning of the Act and all other employees.
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 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 International Union of Operating Engineers, Stationary Locals 68-68A-68B, AFL-CIO.

BY ORDER OF THE COMMISSION

  
William L. Kirchner, Jr.  
Acting Chairman

Dated: March 30, 1970  
Trenton, New Jersey



APPEARANCES: ( continued )

For the Public Employer

Rufus R. Little, M.D., Superintendent of Bergen Pines County Hospital, Paramus, N. J.

Charles R. Clark, Assistant Superintendent of Bergen Pines County Hospital, Paramus, N. J.

Paul W. Smith, Observer for Bergen County, Hackensack, N. J.

For the Petitioner

Donato Benedetto, Business Representative, International Union of Operating Engineers, Local 68, 509 Orange Street, Newark, N. J. 07107

During the course of the Hearing, Counsel for the Petitioner, made a motion to amend the Petition paragraph 2.b. to read 42 instead of 30 as the number of employees in the unit. The Hearing Officer reserved Decision on said motion. Upon due consideration the Hearing Officer states his Decision to be as follows: Motion granted in all respects. The Petition paragraph 2.b. is deemed filed nunc pro tunc to read 42 as the number of employees in the unit, and not as heretofore. The Petition in its entirety, as amended, is respectfully referred to the Executive Director to determine the adequacy of the showing of interest and to make and state such findings thereon as he deems warranted, that being a function solely within the jurisdictional province of the Executive Director, as set forth in the Rules and Regulations of the Commission, Chapters 10 through 19, Subtitle C of Title 19 of the New Jersey Administrative Code.

Counsel for the Petitioner, sometime thereafter raised an Objection to the following question asked during Direct Examination of a witness Donato Benedetto, called on behalf of the Public Employer: "Are any of those cards representative of watchmen employees?" Transcript of Testimony, (page 49). Counsel for the Petitioner in stating the reasons for his Objection, requested the witness not to answer. The Hearing Officer treated that statement and request as a motion for instruction and

direction of and to the witness not to answer that question, reserved Decision on said motion and thereupon suggested that Counsel proceed further with the direct examination of the witness. Upon due consideration the Hearing Officer states his Decision to be as follows: Motion granted in all respects and the witness be deemed instructed and directed, nunc pro tunc, not to answer that question. That direct examination having been proceeded with without an answer to the question to which the objection was taken, there was continuity without interruption.

Brief submitted on behalf of the Public Employer by Michael J. Ferrara, Esq., County Counsel, by Edwin C. Eastwood, Jr., Esq., Assistant County Counsel, Of Counsel, was received by the Hearing Officer on the 6<sup>th</sup> day of December, 1969, having theretofore been filed by said Counsel with the Commission directly.

The Petitioner herein alleges that:

1. It seeks recognition and certification as the exclusive negotiating representative of all of the Public Employer's Maintenance Department employees.
2. It seeks a determination that aforesaid employees constitute an appropriate unit for purposes of collective negotiation.
3. An election should be held in said proposed unit.
4. The Public Employer should bargain with said unit for that purpose.

The Public Employer herein contends that:

1. The 30 employees, as alleged in the Petition, or the 42 employees as alleged in the then proposed amended Petition of the Petitioner,

to constitute the Public Employer's Maintenance Department employees, are not all of said Employer's employees in the unit that would constitute an appropriate unit.

2. A unit comprised of 30 or 42 employees of said Employer's Maintenance Department employees, is not an appropriate unit.

3. The Petitioner above entitled in a prior Petition which it filed with the Commission for Certification of Public Employee Representative, obtaining a Decision of the Commission in its favor following the Representation Proceeding Hearing thereon, Docket No. R-70, did thereby succeed in totally and completely distinguishing the Maintenance Department employees of above entitled Public Employer involved with Petitioner in aforesaid Representation Proceeding, from being considered as employees of - Craft Skills. Said Employer further asserts that aforesaid Petitioner now contends that the said Maintenance Department employees constitute an appropriate unit. In contrast, said Employer asserts that it previously contended and still contends that all of its blue collar employees, those in the unit established as appropriate in the said prior Proceeding, Docket No. R-70, as well as all others in its Maintenance Department together with all its other blue collar employees, constitute one appropriate unit.

4. The Petitioner, though obligated to do so, failed initially and finally to adduce evidence as to which employees are within the purported unit, the work they do and the crafts they do.

5. The evidence adduced by the Petitioner indicated a group of employees performing all different kinds of employment; that all such varied groups do not constitute a valid bargaining unit within the intent of Public Law 303.

6. The said Employer, whose Counsel requested and was granted leave

by the Hearing Officer to do so, submitted its Brief, wherein it asserted, in effect, that:

(a). The Petitioner, contrary to the intent of Public Law 303, seeks to become negotiating representative for all of the Employer's blue collar employees by fragmentation, irrespective of traditional skills, crafts, training background and common interest;

(b). The intent of Public Law 303 was to include within a negotiating unit, all employees who are identifiable within that group, not intending that a large number of small collective negotiating units be created rendering collective negotiations totally unworkable;

(c). The only valid collective negotiating unit within the intent of Public Law 303, would encompass all of the blue collar employees of said Employer; and that such evidence as was adduced during the Hearing, supported this contention.

It is noted that Employer's contention 3. (page 4, supra) that all of its Maintenance Department employees, constitute, together with all of its other blue collar employees, an appropriate unit, is contradicted by its contention 5. (page 4, supra) that the evidence adduced by the Petitioner in this subject Hearing, shows said Employer's Maintenance Department employees performing all different kinds of employment, that all such varied groups do not constitute a valid bargaining unit within the intent of Public Law 303; this last is contradicted by its contention 6.(c). (page 5, supra) that within the intent of Public Law 303, the only valid collective negotiating unit would encompass all of the Employer's blue collar employees, and that this contention was supported by the evidence adduced during this subject Hearing.

The issue as to "the adequacy of the showing of interest" by reason of the amendment of paragraph 2.b. of the Petition filed herein, to set forth "42" as the number of employees in the unit instead of the lesser number previously set forth therein, having been referred, by this Hearing Officer, to the Executive Director for Determination and Decision (page 2, supra); then, without prejudice to the extent and effect of such Determination and Decision, the sole remaining issue is that of "the Appropriate Unit".

The broad guidelines for determining the "appropriate unit" stated by the Legislature at the time it enacted the statute, Chapter 303 of the Laws of 1968, the governing statute, are provided in Section 7, thereof ( C. 34:13A-5.3 ) as follows:

"\*\*\* The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.\*\*\*"

Section 7, at its inception, also provides that

"\*\*\* public employees shall have,\*\*\* the right, \*\*\* to form, join and assist any employee organization \*\*\*; provided, however, that this right shall not extend to any managerial executive except \*\*\* nor, except where established practice, prior agreement or special circumstances, dictate to the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership, \*\*\*."

There is a dispute wherein the Employee Organization by its Pet-



ition duly filed herein, seeks certification as Public Employee Representative for the Maintenance Department employees of this Public Employer, therein asserting that said employees constitute an appropriate unit for collective negotiating; and in the event of such a Determination, further seeks the holding of an election therein and a direction that the said Public Employer negotiate with that unit; and further asserting in said Petition that the Public Employer declined Petitioner's request for recognition as exclusive representative.

The Public Employer, among other assertions, emphatically disputes that its said employees constitute an appropriate unit for such purpose, nor does this Employer deny that it declined Petitioner's request for recognition as exclusive representative.

A plenary Hearing held as hereinabove set forth, was presided over by this Hearing Officer, during the course of which, Counsel for the respective parties made opening and closing statements, presented their several witnesses who, under oath, testified in direct and cross examination to which they were subjected, complete minutes were taken and thereafter transcribed, available to the parties if their counsel wished to obtain same from the stenographer. A Brief was submitted by Counsel for the Public Employer.

This Hearing Officer after full and complete consideration of the Petition, the testimony of the witnesses, arguments and statements of respective Counsel, all evidence and the entire aforesaid record herein and the Brief submitted by Counsel for the Public Employer, upon all of the foregoing, and having had due deliberation thereon, does find, as follows:

#### FINDINGS

1. All of the Public Employer's Maintenance Department employees at the Bergen Pines County Hospital, Paramus, New Jersey, are under

the supervision of the Maintenance Superintendent who has responsibility for all areas of heating and maintenance, and he is in charge of the Maintenance Department. He has general supervision over the employees in the following job categories:

- One Maintenance Repair Foreman;
- Two Assistant Maintenance Repair Foremen;
- Twelve Senior Maintenance Repairmen;
- Twenty-one Maintenance Repairmen;
- Three Laborers;
- Two Grounds Keepers;
- Three Truck Drivers;
- One Medical Electronic Repairman;
- One Chief Stationary Engineer;
- Six Stationary Engineers; and
- Five Watchmen.

2. This Commission in a Decision in a prior proceeding involving the same above entitled Petitioner and Public Employer, Docket No. R-70, has stated the foregoing Six Stationary Engineers constitute an appropriate collective negotiating unit, as the Engineers and Firemen employed in the boiler room of this Public Employer, excluding therefrom the One Chief Stationary Engineer as a supervisor. None of these employees are involved in subject Proceeding, Docket No. R-119, nor in any wise comprise any part of the number of employees in the Petition filed herein, as amended.

3. The One Maintenance Repair Foreman, upon concurrence of the parties and stipulation in the record, is classified as a supervisor and is excluded from inclusion in the proposed unit herein.

4. The two Assistance Maintenance Repair Foreman have full authority requiring the use of their independent judgment and which is other than of a merely routine or clerical nature in connection therewith, to responsibly direct the other Maintenance Department Employees, and in accordance with the established practice have actual authority over men and machines. They are of the supervisory class. They are often assigned by the Maintenance Repair Foreman to assume designated supervision of special areas of work involving specific Maintenance Department employees. The employee's supervisory status is determined by his duties, not his job title. The mere existence of the power to responsibly direct others, rather than the actual exercise of the authority, is sufficient. The fact that as much as 95% of their respective working time may be devoted to performing assigned maintenance work, and the fact that they fail to have the power to hire, discharge, discipline or to effectively recommend the same, does in no wise diminish the finding that they are supervisors. In the absence of the Maintenance Foreman they must function as supervisors. It is readily conceivable, that by reason of his absence, be it of short or long duration, whether because of his illness, disability or otherwise, they may be required to devote almost all, if not their entire time to their functions as supervisors. They are classified as supervisors and are excluded from inclusion in the proposed unit herein.

5. The Five Watchmen, whose duties of security include the duty to enforce against employees and other persons rules to protect the property of the Public Employer, and protect the safety of persons on the property, by the very nature of their duties, hours of employment and scope of activities, have duties essentially of a different nature

than the duties of the other Maintenance Department Employees. Although under the supervision of the Maintenance Superintendent, the Watchmen in effect neither share nor play any part in the community of interest found encompassing the Maintenance Department Employees. In rare times of an emergent or very urgent situation the Watchmen may be called upon to work in conjunction with the other Maintenance Department employees. This is a far cry from their regular duties, hours of employment, concerns, and interests that are so markedly different from those of said other employees. The duties of these Watchmen may involve duties other than such as are normally performed by Watchmen and such duties may be considerable, leaving only a small portion of their working time devoted to their duties as Watchmen; under established practice, such employees are classified as Watchmen. Watchmen are not normally Policemen nor armed guards(uniformed or not) although at times they may be so employed. To some extent the Watchmen's regular above duties of security and protection are duties also performed byPolicemen. Some of the provisions (not heretofore quoted) of Sec. 7, supra, to the extent that duties of a Policeman are involved, exclude Policemen from an employee organization admitting employees other than Policemen to membership. The Five Watchmen, as has been conceded by the Petitioner, and for all of the above stated reasons, are classified as Watchmen and are excluded from inclusion in the proposed unit.

6. The twelve Senior Maintenance Repairmen, and the twenty-one Maintenance Repairmen, have duties of a responsible nature, requiring a degree of skill, the senior category requiring more skill and responsibility than the corresponding non-senior category. The duties are

of a responsible nature, involving the use of craft skills such as plumbing work, electronic, and such manner of maintenance repair work throughout the Hospital of the Public Employer. Mr. Crowley, one of the Senior Maintenance Repairmen, has regular normal duties, in which on a day to day basis, he performs the servicing of calls for maintenance and services. On occasion, in the absence of the foreman from the office, when there is an urgent maintenance request, he assigns maintenance (employee) personnel to respond and perform the required, maintenance service duties. He does not have the power to hire, discharge, discipline or to effectively recommend the same. There has been no evidence adduced indicative of any authority or power, allocated or granted to him to supervise or otherwise direct any of the men(employees) or machines of the Public Employer's Maintenance Department, other than of a merely routine or clerical nature, in connection therewith, and this only on the occasion of an urgent maintenance request in the foreman's absence from the office. He is not a supervisor, **but a Senior Maintenance Repairman and is so classified.**

7. Some of the Maintenance Repairmen are employees who are of a general maintenance grade, not having a particular skill in a field. They do such work as routine changing of light bulbs or the routine checking of preventive maintenance, checking motors, and the like. They work with the Senior Maintenance Repairmen and in some cases may look for promotion to the job category of these latter.

8. The one Medical Electronics Repairman has duties requiring routine maintenance work on various pieces of Hospital equipment-- **mostly Medical equipment.**

9. The Three Laborers in general have duties which require them

to work with and assist the Maintenance Repairmen on their assigned jobs.

10. The two Grounds Keepers have duties which are partly seasonal and during the summer season there are more of these employees; but there are at least two such employees the year round. Their duties basically are concerned with the lawn, flower beds, snow removal and the like. On many occasions they are assigned to work indoors, in which case they function very much like the Laborers.

11. The two Truck Drivers for the most part have hospital truck driving duties, although they could be using other vehicles, in collecting ground debris, garbage from outlying buildings, and transporting maintenance materials, as needed for maintenance, throughout the various hospital buildings.

12. There is a practical interchange of duties between the Laborers and Grounds Keepers, the former oftentimes being assigned to snow removal or work of an emergency nature. The Truck Drivers interchange duties with the Laborers and Maintenance Repairmen, the employees of the last two categories may be driving the trucks.

13. In accordance with established practice, even employees having dissimilar skills, but subject to the same working conditions, may have sufficiently similar negotiating interests to warrant placing them in one unit. Truck Drivers have not automatically been granted a separate unit. They have been placed in a unit with other employees, depending upon the degree of integration involved. Employees doing more than one type of work are usually placed in the unit to which they devote most of their time. An employee engaged in various jobs for his employer, may be included in the negotiating unit in which

he has sufficient interest in its working conditions, even if he devotes less than half his working time in work covered by that unit. In such circumstances, when other considerations are evenly balanced, so that any one of two or more units are equally appropriate, the wishes of the employees themselves, are important.

14. The Public Employer's forty-two Maintenance Department employees, consisting of twelve Senior Maintenance Repairmen, twenty-one Maintenance Repairmen, one Medical Electronics Repairman, three Laborers, two Grounds Keepers and three Truck Drivers, exclusive of the five Watchmen, the one Maintenance Repair Foreman, the two Assistant Maintenance Repair Foremen and the Maintenance Superintendent under whose general supervision they all fall, have readily ascertained duties in the areas of the traditional skills and crafts. They constitute a readily determinable homogenous grouping of integrated job categories, having a clear and pointed community of interest, whose members have similar kinds of training, vocational background and skills. They all, in a readily distinct line of supervision are under the direction of the Maintenance Superintendent. They are all centered in the Public Employer's Maintenance Shop, located in the basement of its building #10. This Shop is a rather large work area divided into sections, where different types of maintenance work is performed and where the different types of maintenance benches and repair tools are located, with different sections assigned for plumbing, sheet metal, carpentry, masonry, electronics and all the basic crafts of the maintenance trade. The Maintenance Repair Foreman, has a desk there, enclosed in a sort of semi-partition. The locker rooms of these Maintenance Department employees, of the above included categories, are located in that same area. Some of these employees

also live in the male employees' wing of that building #10, although many do not. Some of the Public Employer's Hospital Physicians also reside in the male employee's wing of building #10. All of the above included Maintenance Department employees are compensated on an hourly rate basis. The various categories work in conjunction with each other but not in conjunction with the Public Employer's other Hospital Departments, as the Food Service Department and the Laundry Department where the quality of skills of the employees thereof, are different than of the said Employer's Maintenance Department employees; and these latter employees are included within the proposed unit.

15. There has been no evidence adduced that any other employee organization seeks to represent the proposed unit.

16. There has been demonstrated an adequate showing of interest for exclusive representation for a proposed unit of thirty employees of the said Maintenance Department, prior to the amendment of paragraph 2b of the petition filed herein to read "forty-two" as the number of employees in the unit, nunc pro tunc. The Executive Director will make a Determination and Decision as to whether there has been demonstrated an adequate showing of interest for a proposed unit of forty-two employees. It is herein respectfully suggested, that consideration by this Commission of the hereinafter stated Recommendation to it by this Hearing Officer shall abide that Determination and Decision by the Executive Director.

17. There has been no evidence introduced to indicate there is a sufficient community of interest among all of the Public Employer's blue collar workers, nor that any specific request by them nor by any Employee Organization for Representation, has been made so as to const-



itute them a single collective negotiating unit. The Hospital is a highly integrated operation. However, the purpose and objective of the Statute, in this particular concern, is that which is most effective for the mutual benefit of the employees involved, looking toward achievement of the best possible atmosphere conducive to a high morale in the area of the Public Employer's relations with its employees, thereby creating highly qualified efficient employees being enabled to perform most effective service, thus in the long run redounding to the benefit of the Public Employer, its patients and the Taxpayer, and the interests and welfare of the public.

RECOMMENDATION:

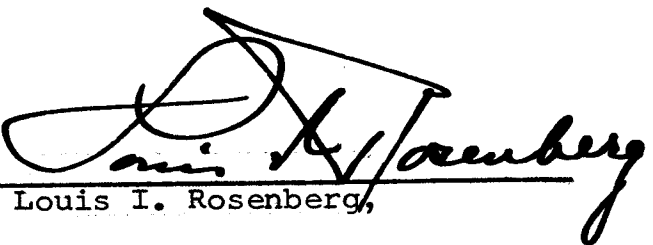
It is respectfully submitted to this Commission that its consideration of this Hearing Officer's Recommendation to it as hereinafter set forth, be deferred to abide the Determination and Decision of the Executive Director of this Commission, that there has been demonstrated an adequate showing of interest for a proposed unit of forty-two employees of that Maintenance Department, then and in that event, it is hereby recommended that:

1. This appropriate collective negotiating unit is all of the forty-two employees of the Public Employer's Maintenance Department at the Bergen Pines County Hospital, Paramus, New Jersey; but excluding office clerical employees, managerial executives, other craft employees, professional employees, policemen and supervisors, as defined in the Act, and all other employees.

2. A secret-ballot election be conducted at the earliest practicable date, among all of the twelve Senior Maintenance Repairmen,

the twenty-one Maintenance Repairmen, the one Medical Electronics Repairman, the three Laborers, the two Grounds Keepers and three Truck Drivers constituting a total of forty-two of the employees in the Public Employer's Maintenance Department aforesaid, who were employed during the payroll period immediately preceding the date of such Decision, if any, as may be rendered herein, by this Commission, including employees who did not work during that period because they were out ill, on vacation, or temporarily laid off, including those in the Military Service. They must appear in person at the polls in order to be eligible to vote. 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, are ineligible to vote. Those eligible to vote, shall vote on whether or not they desire to be represented by the International Union of Operating Engineers, Local 68, to be determined by a majority of the valid ballots cast.

January 2, 1970



Louis I. Rosenberg,

Hearing Officer