

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY MOSQUITO EXTERMINATION COMMISSION

Public Employer

and

CAMDEN COUNTY LOCAL 1965, AFSCME, AFL-CIO

Docket No. R-102

Petitioner

and

CAMDEN COUNCIL #10, NJCSA

Docket No. R-107

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Camden County Mosquito Extermination Commission in the above-consolidated cases, a hearing was held on September 11, 1969 before ad hoc Hearing Officer Morrison Handsaker at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Thereafter, on September 30, 1969, the ad hoc Hearing Officer issued a Report and Recommendation. Exceptions have not been filed to the Hearing Officer's Report and Recommendation. The Commission has considered the record and the Hearing Officer's Report and Recommendation and on the facts in this case finds:

1. The Camden County Mosquito Extermination Commission is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. Camden County Local 1965, AFSCME, AFL-CIO and Camden Council #10, NJCSA are employee representatives within the meaning of the Act.

3. The Public Employer having not granted recognition to either 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. In the absence of Exceptions to the Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, the Commission adopts the Hearing Officer's Report and Recommendation pro forma.

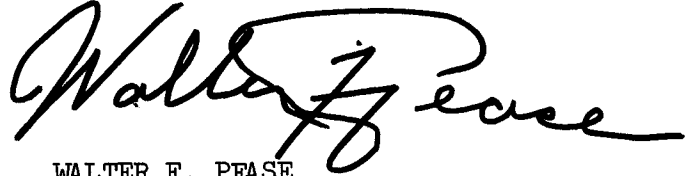
5. Accordingly, the Commission finds the appropriate collective negotiating unit is: "All employees of the Camden County Mosquito Extermination Commission, including the foreman; but excluding managerial executives, craft employees, professional employees, policemen and supervisors as defined in the Act."

6. 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. The election directed herein shall be in accordance with the Commission's Rules and Regulations and Statement of Procedure.

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 the Camden County Local 1965, AFSCME, AFL-CIO; Camden Council #10, NJCSA; or neither.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, reading "Walter F. Pease". The signature is written in a cursive style with a large, sweeping initial "W".

WALTER F. PEASE
CHAIRMAN

DATED: November 20, 1969
Trenton, New Jersey

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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and

CAMDEN COUNTY COUNCIL #10, NJCSA

Docket No. R-107

Hearing Officer's
Report
and
Recommendation

APPEARANCES:

For the Public Employer:	William D. Dilks, Esq.
For AFSCME:	Robert R. Klingensmith International Union Area Director
For Council #10, NJCSA:	M. Allan Vogelsson, Esq.

Report

Pursuant to the provisions of the New Jersey Employer-
Employee Relations Act of 1968 (Chapter 303 PL 1968), and to
a notice of hearing dated August 19, 1969, issued by Mr. Louis

Aronin, Acting Executive Director of the Public Employment Relations Commission, a hearing was held before Hearing Officer Morrison Handsaker, at the New Jersey State Employment Service Office, Room 20, 910 Broadway, Camden, New Jersey, on September 11, 1969.

On August 18, 1969 PERC had issued an order consolidating Docket No. R-102, involving the Camden County Mosquito Extermination Commission, and Camden County Local 1965, American Federation of State, County and Municipal Workers, AFL-CIO, with Docket No. R-107, involving the Camden County Mosquito Extermination Commission and Camden County Council #10, New Jersey Civil Service Association. The hearing covered these two docketed cases.

The purpose of the hearing was to ascertain the facts on which the hearing officer could base his recommendation to PERC as to the appropriate negotiating unit for the employees of the Camden County Mosquito Extermination Commission.

The attorney for the CCMEC stated that the Freeholders of the County of Camden had established the Commission on April 20, 1965, and that it operates as an autonomous body with a separate budget, and with its own job descriptions and pay scales. (CCMEC Exhibits 2 and 3, and Transcript, pp. 9-10 and p. 90.) Therefore, the Commission is a separate employer, and its employees properly constitute a negotiating unit.

The CCMEC, Council #10, NJCSA, and Camden County Local 1965, AFSCME, all agree that there should be one negotiating

unit for both white and blue collar employees of the CCMEC. They also agreed that the superintendent (Mr. Thomas E. Sellars), whose function was entirely that of management, should not be included in the unit. The only difference in views concerned the inclusion or exclusion of the foreman (Mr. James E. Thomas).

In order to verify, at the hearing, that all the parties agreed on the inclusion of all other employees in one unit, the names of employees and the job titles of each were read from the payroll for the period 8/16 to 8/29, 1969. This included seventeen names (other than those of the superintendent or foreman). Approval for the inclusion of each of these was recorded separately. (CCMEC Exhibit 1, and Transcript pp. 16-23)

This review also showed that there were no employees who might be considered either as professional or craft employees. Therefore, no questions arose under NJSA:34:13A-6d (2) and (3), which contain special provisions for employees in these categories.

It was also agreed that three positions filled on a temporary basis during the summer, should be included, but could be voted only if an election were held during the summer when there were occupants for these temporary positions. (Transcript, p. 27.)

The greater part of the hearing was devoted to the duties of the foreman. The CCMEC, and Council #10 favored his inclusion in the negotiating unit. Local 1965 wanted

to exclude the foreman. (Transcript pp. 10-11, 13, 105 and 109.)

Testimony was taken to ascertain whether the foreman had "power to hire, discharge, discipline or to effectively recommend the same", and so whether he should be excluded under 34:13 A-5.3 of the Act.

Council #10 introduced the Civil Service job description for foreman of the CCMEC. This stated that the foreman "under direction, supervises and works with groups of employees engaged in mosquito extermination and control, and does related work as required". It also stated that the foreman "may operate, check, service and make minor repairs to motorized and mechanized equipment in addition to supervisory tasks". (Joint Exhibit 1-A.)

Local 1965 brought out that job descriptions for the CCMEC and also the Camden County Highway Department do not specifically state responsibilities for discipline, hiring and firing. (Transcript p. 75 and pp. 103-104.) Local 1965 took the position that the absence of these terms from the job description did not prove that the foreman did not in fact have such power. Accordingly, the representative of Local 1965 questioned witnesses extensively concerning the duties of the foreman.

Testimony of Mr. Thomas, the foreman, and Mr. Sellars, the superintendent, showed that Mr. Thomas had never hired anyone, and that although he made reports to Mr. Sellars concerning a worker's performance, and described any

discipline problems, Mr. Thomas made no effective recommendations for action. Decisions were made only by Mr. Sellars after personal investigation by Mr. Sellars. Mr. Sellars discussed reported work deficiencies or discipline problems with both Mr. Thomas and the employee present, and then determined appropriate action. In cases which might lead to dismissal, Mr. Sellars conferred also with members of the CCMEC. Civil Service procedures, providing for a hearing if necessary, were followed. (Transcript p. 44, p. 51, p. 54, p. 59, p. 62, pp. 67-68, and p. 70.)

The fact that the foreman in addition to instructing employees in their work, works with them on occasion, as evidenced by the job description cited above, establishes, in the judgment of the hearing officer, community of interest between the foreman and the employees. (Transcript pp. 39-40.)

It was brought out that Mr. Thomas was a member of the Board of Trustees of the NJCSA. (Transcript pp. 46-47.) In the judgment of the hearing officer, this fact itself should not count for or against his inclusion in the bargaining unit. Under the law, inclusion or exclusion must turn on the responsibilities of the job of foreman with the CCMEC.

It is the recommendation of the Hearing Officer that the unit be comprised of the employees of the CCMEC, excluding the superintendent, but including the foreman, on the grounds that the foreman's supervisory duties do not include hiring and discharging or discipline, and that he does not

effectively recommend on these matters. His inclusion is therefore not in conflict with 34:13 A-5.3.

At the hearing, Council #10, NJCSA, not only presented evidence concerning the appropriate negotiating unit, but took the position that it was not necessary for a certification election to be held. (Transcript p. 12, p. 84 and p. 108.)

In support of this position, Council #10 referred to a letter from Mr. Leslie A. Miller, Chairman of the CCMEC, dated July 22, 1969 (Council #10, Exhibit 1) saying that the Commission had verified the list of dues paying members belonging to Council #10, and that it intended to recognize Council #10 as the exclusive negotiating agent. The letter from the Chairman of CCMEC also stated: "All permanent 'blue collar' and 'white collar' personnel employed by the Commission belong to Council #10; therefore, an election to determine who should represent the employees is not deemed necessary."

In further support of its position, Council #10 introduced a notarized list of 12 signatures of employees of CCMEC, dated September 11, 1969 (the day of the hearing), asking to be represented by Council #10. (Council #10-Exhibit 2.)

Concerning the letter from Chairman Miller of CCMEC, the representative of Local 1965 testified that on July 3, 1969, a date significantly earlier than July 22, 1969, Local 1965 had filed a certification petition with PERC. PERC had judged that there was sufficient showing of interest to call

the present hearing. (Transcript, pp. 12-13, p. 97.)

The Hearing Officer permitted this testimony in order to develop a history of the case. He is not including a recommendation on this aspect of the case, because according to Rules and Regulations of PERC, 19:11-7 (page 8) matters of the adequacy of the showing of interest are to be determined by the Executive Director and "such decision shall not be subject to collateral attack before a hearing officer".

Recommendation

It is the recommendation of the Hearing Officer that in the election to be held, the appropriate negotiating unit shall be all the employees of the Camden County Mosquito Extermination Commission, except the Superintendent. The unit should include the foreman.



Morrison Handsaker
Hearing Officer

Dated: September 30, 1969
Easton, Pennsylvania