STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES INTERSTATE PARK COMMISSION
Public Employer

and

Docket No. R-63

BERGEN CHAPTER NO. 6, NEW JERSEY STATE EMPLOYEES ASSOCIATION
Petitioner

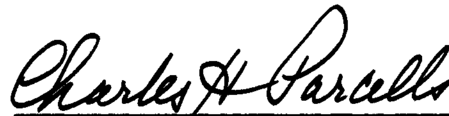
DECISION

Pursuant to a Notice of Hearing to resolve a question concerning representation, a hearing was held on August 14, 1969 before Hearing Officer Milton Friedman, Esquire, on a petition filed by Bergen Chapter No. 6, New Jersey State Employees Association seeking to represent all employees in professional, supervisory, clerical, craft and non-craft titles, excluding only the Superintendent and the Assistant Superintendent, employed by the Palisades Interstate Park Commission within the New Jersey section of the Palisades Interstate Park. The Employer contended that the unit sought was inappropriate. All parties were given an opportunity to call, examine and cross examine witnesses, to present evidence and to argue orally. Briefs were submitted by both parties. Thereafter, on December 4, 1969, the Hearing Officer issued his Report and Recommendations. The Employer timely filed exceptions thereto.

While the instant matter was pending decision before the Commission, litigation was undertaken in March, 1970 by the Delaware River and Bay Authority (a bi-state agency similar to the Palisades Interstate Park Commission) wherein it challenged the jurisdiction of the Public Employment Relations Commission to process petitions for certification of public employee representative affecting the Authority's employees. On June 7, 1971 after the prosecution of an appeal to the Supreme Court of New Jersey, the Court held this Commission to be without jurisdiction to entertain petitions for certification of representative involving Delaware River and Bay Authority employees on the ground that the Authority, as a bi-state agency established by compact between sovereign states, did not come within the definition of public employer contained in Chapter 303 of the P.L. of 1968 and therefore, that act had no application to the Authority. Delaware River and Bay Authority v. Public Employment Relations Commission, et al, 112 N.J. Super 160 (App. Div. 1970), affirmed, 58 N.J. 338 (1971). While by its terms that decision does not proscribe generally the Commission's authority to act in matters involving employees of bi-state agencies, it does cast doubt upon the Commission's jurisdiction to proceed in this matter and requires the examination by the Commission of its authority to entertain the subject petition before consideration on the merits of the issues presented thereby.

In Delaware River and Bay Authority, supra, the Court found that the compact which created the Delaware River and Bay Authority did not permit one signatory state, absent the agreement of the other signatory state, to impose its policies upon the Authority. Thus, absent specific agreement by Delaware to have C. 303 of the P.L. 1968 apply to the Authority, it did not, and hence the Commission lacked jurisdiction over that bi-state authority. Contrasted with this, the compact establishing the Palisades Interstate Park Commission permits unilateral action by either New York or New Jersey to amend the powers and responsibilities of the Palisades Interstate Park Commission provided such is accomplished "...by law specifically applicable to the (Palisades Interstate Park) Commission." N.J.S.A. 32:17-5; N.Y. Conserv. Law, Sec. 745 (McKinney 1954). Therefore, the rationale of Delaware River and Bay Authority, supra, is not applicable and the Commission could assert jurisdiction over the Palisades Interstate Park Commission without violating the spirit of the Delaware decision provided there exists legislative enactment by New Jersey specifically applicable to the Palisades Interstate Park Commission. N.J.S.A. 32:17-5; N.Y. Conserv. Law, Sec. 745 (McKinney 1954). 1/ Review of the statutes of New Jersey including C. 303 of the P.L. of 1968 does not, however, reveal legislation specifically applicable to the Palisades Interstate Park Commission subjecting that Commission to the jurisdiction of P.E.R.C. or making C. 303 of the P.L. of 1968 applicable to the Palisades Interstate Park Commission. Without such legislation, the Commission cannot continue to entertain the petition filed herein and therefore orders the same be and it is hereby dismissed for lack of jurisdiction.

BY ORDER OF THE COMMISSION



Charles H. Parcells
Acting Chairman

DATED: September 14, 1971
Trenton, New Jersey

1/ See, for example, N.J.S.A. 32:14-4 which specifies the applicability to the Palisades Interstate Park Commission of the Civil Service, workmen's compensation and retirement system statutes of New Jersey. Also, New York Conserv. Law, Sec. 766 (McKinney 1954) was amended in 1969, specifically making Palisades Interstate Park Commission employees "employees of the state in the classified Civil Service of the state under the provision of the Civil Service Law." The New York Taylor Law falls within the purview of the Civil Service Law of the State of New York.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES INTERSTATE PARKWAY COMMISSION

-and-

BERGEN CHAPTER NO. 6, NEW JERSEY STATE EMPLOYEES ASSOCIATION

REPORT and RECOMMENDATIONS of HEARING OFFICER

(Docket No. R-63)

APPEARANCES:

For the Employer:

Philip S. Carchman, Esq., Deputy Attorney General, State of New Jersey
Frank Mason, Deputy Director, Office of Employee Relations, State of New Jersey
Joseph O. I. Williams, Assistant General Manager and Controller

For the Association:

Vincent D. Girard, Esq., Attorney
George McGowan, President
James Amore, Vice-president

Palisades Interstate Parkway Commission is a public employer and Bergen Chapter No. 6, New Jersey State Employees Association is an employee organization within the meaning of the Act. The

Association asserts that it represents the overwhelming majority of approximately 60 professional, clerical, craft and non-craft employees in the Commission's New Jersey section.

The Association does not clearly define the unit sought. In its petition it seeks inclusion of all New Jersey employees in professional, supervisory, clerical, craft and non-craft titles, excluding only "Superintendent and Asst. Superintendent of N. J. Section." The petition states that 59 of 62 employees have signed authorization cards. In its brief the Association lists one of six supervisors and one of five professionals as Association members. Supervisors may not be included in the same unit as non-supervisors, pursuant to C. 34:13A-6, unless there are special circumstances dictating the contrary. None is shown here. Thus the unit cannot include other than the non-managerial, non-supervisory and non-police employees of the New Jersey section, provided the majorities of professional and craft employees separately vote to be included.

The Commission has declined to recognize the Association as the exclusive representative of its employees, and a question concerning representation exists. Essentially, however, the issue in this case is whether any group or all of the employees constitute an appropriate unit or whether the Commission's employees should be submerged in broader units. Once that

question is decided, there will be no substantial issue remaining. In the event that the unit sought by the Association is held to be appropriate, the mechanics of determining the precise composition of the unit should pose no problem, and a representation election can be held with dispatch.

The Palisades Interstate Parkway Commission is a bi-State organization, created by statutes of New York and New Jersey. The Commission submits reports of its activities and finances to both states. It receives no administrative supervision from either. Operationally, it is a self-contained organization, and it is not a department, agency or division of the State.

The park covers territory in both states. Those employed on the New York side are treated as public employees of the State of New York; those on the New Jersey side are treated as New Jersey State employees, and, for example, are covered by the retirement system of the State. Both States provide financial support for the Commission, which also receives funds from revenues and gifts. There are fewer than 100 employees on the New Jersey side, about one third of whom are park police.

In Alpine, New Jersey, are located various buildings including garages, a storehouse, a shop for craft employees, and a storage yard. The Commission's New Jersey clerical

employees work in the Administration Building elsewhere in Alpine. Some three miles away is another facility, Cadjenas, under the supervision of a foreman and an assistant foreman. It is apparent that the New Jersey employees work in generally close proximity to one another. The various levels of supervision report ultimately to the Commission's executive officers. The Commission and its employees are concerned solely with the work of the interstate park, and have no other function. They are not interchanged with the other employees of the State.

The Commission sets the salary scales for its employees, and through its executive officers manages its employee relations, without supervision or control from any other jurisdiction. While the Commission has legal authority to fix salaries, it appears that as a practical matter the State will authorize funds only if the salary scales are consistent with those set by the Civil Service Department for State employees. Where a job title is identical with that of the State's title, the description and the salary scales are identical. There may be some variation only in connection with titles peculiar to the Commission, not found among State employees. The same appears true in the New York section whose employees receive the rates paid for identical work to New York State employees.

It is plain that the Commission, despite the source of its funds and such characteristics as the similarity of pay scales,

is necessarily different in substance from an agency or institution of either State. Yet, the employees of the New York section, who number considerably more than those in New Jersey, were intermingled with New York State employees in the various State-wide units established by the Public Employment Relations Board.

In this proceeding the State and the Commission have proposed a formula analogous to that adopted in the New York section. The Employer's viewpoint here is that the Commission's employees should also be effectively regarded as State employees and included in the system of units proposed by the State. The Employer vigorously opposes the Association's request that the employees of the New Jersey section alone be considered an appropriate, separate unit.

The State has developed a plan calling for nine separate units into which its approximately 40,000 employees would be divided. They were identified as professional, supervisory, craft, police, administrative services, health care, rehabilitation services, operational, and maintenance and allied services. These nine functional groupings would, in the view of the State, best serve the interests of the employees and the State.

The Association argued that no employee organization has sought to represent the employees in any of the nine units

outlined by the State. On the other hand, it was asserted, the employees of the Commission want to have their own unit and to be represented by the Association. Such a unit is appropriate under Section 303, it was said. Otherwise, these employees are deprived of their statutory right to organize and bargain collectively, for no other organization seeks to represent them.

It would be pointless in a proceeding of this kind to make a finding on the basic appropriateness of each of the nine units into which the State hopes to divide its employees. However, it is necessary to make some evaluation of the State's position in order to determine whether such an approach justifies denial or the unit sought by the Association, as well as to evaluate the distinction between the Commission and agencies of the State Government.

The State is concerned that if the Association is sustained, future creation of such units will lead to widespread fragmentation. In its brief it said "there are numerous small geographic units located throughout the entire State which, if the Bergen Chapter's position were upheld, would be allowed to bargain individually. Such an eventuality would be chaotic for the employer and an undue burden on the taxpayer."

Certainly it is more difficult for the State to bargain with a multiplicity of units, geographical or otherwise, than

with a single unit, or with a limited number. The State's approach would avoid, for examp'e, the possibility that employees in identical positions might receive varying salary scales, depending upon the unit in which they found themselves. In the State's plan, everyone in a classification, wherever he is employed, would be included in one of the units; each unit would consist of a bundle of more or less related classifications. Conceptually, this is the approach taken in New York.

However, Section 303 sets forth only one fundamental standard for determining appropriate unit. It provides that "the negotiating unit shall be defined with due regard for the community of interest of all the employees concerned..." The only other qualifications concern separation of supervisors from non-supervised, professionals from non-professionals, and craft employees from non-craft employees. This single guidepost in Section 303 is substantially different from the Taylor Law's criteria.

The New York statute has two other standards in addition to the employees' community of interest. One provides that "officials of government at the level of the unit shall have the power to agree, or to make effective recommendations... with respect to the terms and conditions of employment..."

The other is that "the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public." While the second and third to some extent may be considered implicit in any approach to unit determination in the public sector, the fact is that the Taylor Law enunciates three co-equal aims, none of which may be considered alone. On the other hand, the New Jersey statute obviously makes the employees' community of interest the touchstone in unit determination.

Section 303 does not contemplate that the unit established shall be the most appropriate, but merely that it shall be an appropriate unit. Thus, it must be decided whether the proposed division into nine State-wide groupings, even if they were the most appropriate, should be grounds for denying what might be an appropriate unit, particularly where the latter is sought by the employees and the former is the creation of the Employer alone. No employees in the State appear to have petitioned for any unit in the form proposed.

The New Jersey employees of the Commission do have a clear and definable community of interest, more so even than employees of a State department, agency or institution, each of which is part of the hierarchical structure of the State Government. Commission employees work for a single non-State agency, one

not administratively subordinate to the State Government. All of them are geographically at a relatively concentrated work-site. While their duties may require some of them to travel throughout the New Jersey part of the park, their central headquarters is in the area where most of the employees work. They have a single, common mission: to assist in the operation of the park. They are subject to the personnel policies and practices of the Commission, which are applicable only to the Commission's employees.

In these respects there is a community of interest which is distinct and identifiable, unrelated to State employees. It is also true that the Commission's employees and their counterparts in State service, effectively governed by the same salary scales and fringe practices, also have common bonds despite the Commission's de jure administrative independence. But employees usually have various communities of interest. A Commission painter, for example, has obvious bonds with State-employed painters, with craft employees at the Commission, with all craft employees in the State, with manual workers employed by the Commission, and with all Commission employees, among others. Which of them should prevail in any given case? To what extent should the employees' own desires prevail, if their desires are not conflicting, as against a predetermined structure envisioned by the Employer alone?

The State's nine-unit approach does not address itself to what may be the first and most significant community of interest of Commission employees. It does not, for them, produce a particularly rational collective-bargaining structure. Its application would divide the few dozen employees in the unit sought into four or more separate units, each one negotiating separately with the State and/or the Commission. While the result would be, to use the State's example, that a painter employed by the Commission would receive the same salary as a painter in South Jersey, such fragmentation would make non-economic issues within the Commission difficult of resolution, for all employees have been governed by a common personnel policy. Obviously consideration must be given to the drawbacks of fragmenting such a small group of employees into a number of State-wide units. There are benefits to be achieved in the employees' constituting their own unit, despite fragmenting them from State employees, especially since the State is not the Employer.

The State's proposal does itself anticipate a form of fragmented negotiations even in the sphere of salaries. While the nine units guarantee uniformity in the salaries of all employees in the same classification, it may well produce a wide diversity in the amounts of general increases which are

negotiated by each of the units. All nurse's aides will receive the same salary and all painters will receive the same salary under the State's plan, but the health-care unit may negotiate a 5% general increase and the craft unit a 10% general increase. Increasing the salaries of State employees by disparate percentages, based solely on the happenstance of separate negotiations, may not be a particularly desirable goal for a public employer. The State's proposed fragmentation will have that result unless it reaches an agreement with one unit and then insists on applying it to the others. That would hardly be a satisfactory approach to genuine collective bargaining. Yet it is the only way to achieve uniformity in general increases when negotiating with a number of unions.

The State's plan has another apparent drawback. It could lead not only to a variety of general increases, but both theoretically and practically it could result in different sets of fringe benefits. If a health care unit has the right to bargain on terms and conditions of employment, it may decide it prefers to apply more or less of the economic package to holidays, sick leave or vacations than it does to salary increases. Whether the State administratively could cope with significant variations in such conditions of employment is doubtful. Indeed, it would obviously be far easier for the Commission to grant

distinctive fringes, regardless of the State's practices, because the Commission is genuinely a separate employer. The State's hospitals, agencies, and departments, however, all are manned by State employees.

New York City has dealt with this problem although its ordinance similarly permits separate salary negotiations by each of its many units. (A study of its experience with fragmented salary negotiations, qualitatively if not quantitatively similar to the State's proposal, would be illuminating.) Time and leave rules and pensions, however, may be negotiated only be an organization or group of organizations representing more than 50% of the City's Career and Salary Plan employees. New York City is beset in practice by its many units, comprising one or more classifications, each of which understandably seeks to obtain more advantageous general increases. But there can be no fragmentation of basic fringes. New Jersey's nine-unit goal is a microcosm of New York City's form of fragmentation, without the statutory safeguard enabling only a majority union or group of unions to negotiate most fringes.

It is true that the Association could not effectively bargain with the Commission on salaries for the handful of Commission employees in various classifications. Where uniform salary scales for identical classifications of Commission employees and State employees is mandatory, in fact if not in

law, the small tail could hardly wag the large dog; the Commission's negotiations for a title hardly could result in fixing salaries to be paid by the State for that title. Thus it would be thoroughly unrealistic to contemplate genuine salary negotiations with the Commission. If they took place, they would be a sham, since the ultimate settlements must necessarily be made by the State with organizations representing the preponderance of employees in each classification.

In any case, the State's plan appears to be a mechanical way to limit fragmentation short of the single-unit concept. It gives insufficient consideration to an important community of interest. For example, a physician may have as much, if not more, in common with an X-ray technician working in the same hospital as he does with an economist in the labor department, although physician and economist probably would be in the professional unit. Thus contrived State-wide functional groupings may leave much to be desired, and contribute less to satisfactory employer-employee relations than a unit consisting of the employees in a cohesive agency, such as the New Jersey section of the Commission. At least the latter has the virtue of common working conditions, personnel practices, supervision, purpose and worksite.

The form of fragmentation proposed by the Association results in a logical unit of employees possessed of a genuine

community of interest. While there can be no viable negotiations with respect to salary scales or major fringes, the day-to-day issues with which unions and employers deal can be most handled effectively through such a unit. If that is what the employees desire, it is questionable whether they should be advised that the maintenance men among them will become part of a maintenance unit which includes men employed throughout the State, and that the clerical employees will be submerged in another large State-wide unit. The Commission could not easily maintain a half-dozen sets of personnal practices, each separately negotiated.

The State is right in its contention that a unit should not be based only upon the extent to which employees have organized. If that were the sole basis set forth here, then obviously it could not be held that the unit sought is appropriate. But if the employees do possess a community of interest and if, as in this case, the employer is a separate entity, there are substantial grounds upon which to find that the unit sought is appropriate.

No unit, either that contemplated by the State or that sought by the Association, can deal effectively with every one of the terms and conditions of employment over which unions are empowered to negotiate. As between the State's relatively artificial efforts, which would be persuasive if the only

issue confronting the employees was salary, and the Association's, the latter describes at least an equally appropriate unit.

In the course of the many proceedings now under way, some consideration should be given to alternative concepts of unit determination other than the Hobson's choice presented here. Just as the employees have a statutory right to organize into units based on a community of interest, the State has a legitimate concern in seeing that the unit structure does not injure the public interest either by unworkable, illogical groupings or by the encouragement of whipsaw bargaining. Perhaps new forms must be developed which can build on the experience of other jurisdictions, encouraging the fullest expression of employee choice while protecting the State against unlimited fragmented bargaining of economic issues.

For example, logical separate units based on the kind of community of interest exemplified by the Commission's work force can deal with working conditions, grievances and "local" issues which are uniquely identified with vertical structures. A council of them, joined together, could deal with the State on statewide economic problems. Some such forms conceivably could more effectively represent the employees than the nine functional units proposed by the State, which would cut horizontally across many

departments and agencies. In any event, careful study of the conflicting viewpoints now being heard is needed.

It is virtually impossible for any unit which cuts across classification lines, as does the unit sought by the Association, to bargain effectively and meaningfully on salary scales. It is virtually impossible for any unit which cuts across the State-wide work force, as does the nine-unit proposal, to bargain effectively over either a uniform general wage increase or State-wide fringes. It is virtually impossible for a unit which cuts across departmental or institutional lines, as does the State's proposal also, to bargain effectively on working conditions or on the personnel practices and policies which are generally applicable to the entire work force in the department or institution. To establish viable units requires consideration of all such problems.

Whatever may ultimately be decided to be the appropriate units for State employees generally, however, as a non-State employer the Commission must be appraised in a different context. Since the Commission is not, in fact, an agency or department of the State, but has the special character resulting from its bi-State form, its employees, who meet the statutory requirement of a community of interest, are entitled to constitute themselves as a separate unit. Placing them in State-wide

functional units, simply because most of the pay scales and fringes are parallel to the State's, overlooks the Commission's actual separate structure. The employer is not the State, but the Commission. The Commission's employees are justified in obtaining a unit which can deal rationally and directly with their employer.

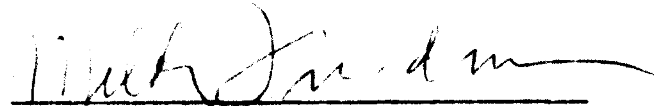
Just as the Commission has authority in law to set salary scales, but in fact must accommodate itself to the State's salary system, a union negotiating with the Commission necessarily must adopt a similarly realistic attitude in dealing with major economic issues. There is no reason to believe it cannot do that, while faithfully representing the employees both in contract negotiations and in day-by-day contract administration. The exigencies of such a situation do not diminish the logic and appropriateness of the unit proposed by the Association.

RECOMMENDATIONS

A unit of all employees of the New Jersey section, excluding supervisors, managers and police, and also excluding craft and professional employees unless either or both of these two groups votes separately to be included, is held to be appropriate.

An election shall be held to determine whether the employees desire Bergen Chapter No. 6, New Jersey State Employees Association to represent them. The time and place

of the election, the eligible voters, and other conditions of the election shall be fixed by the Public Employment Relations Commission in consultation with the parties.



Milton Friedman
Hearing Officer

December 4, 1969

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

On this 4th day of December, 1969 before me personally came and appeared MILTON FRIEDMAN, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.