

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY

Public Employer

and

LOCAL 194, AMERICAN FEDERATION OF TECHNICAL
ENGINEERS, AFL-CIO

Petitioner

Docket No. R-50

and

LOCAL 1511, AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO

1/
Intervenor

and

LOCAL UNION 723, affiliated with INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
and HELPERS OF AMERICA

1/
Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the New Jersey Turnpike Authority, a hearing was held before ad hoc Hearing Officer Kenneth McLennan on June 5, 1969 at which all parties were given an opportunity to present evidence, examine and cross-examine witnesses and argue orally. On August 14, 1969 the Hearing Officer issued his Report and Recommendations. Exceptions have been filed by the Public Employer and by the Petitioner to the Hearing Officer's Report and Recommendations. The Commission has considered the

1/ Locals 1511 and 723 were permitted to intervene based upon the submission of a sufficient showing of interest.

record, the Hearing Officer's Report and Recommendations and the Exceptions and finds:

1. New Jersey Turnpike Authority is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Local 194, American Federation of Technical Engineers, AFL-CIO; Local 1511, American Federation of State, County and Municipal Employees; and Local Union 723, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are employee representatives within the meaning of the Act.
3. The employee representative organizations claim to be the majority representative of employees involved in the proceeding. The Public Employer having failed to recognize any employee organization as the exclusive representative, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.
4. The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, are adopted, except as modified herein.
5. In the absence of Exceptions to the Hearing Officer's recommendations regarding the appropriate unit the Commission adopts pro forma the Hearing Officer's recommendations regarding the appropriate collective negotiations unit, except as herein modified to conform to statutory requirements, and finds it to be "all of the collectors and maintenance employees in the Operations Division of the New Jersey Turnpike Authority; but excluding part time employees, professional employees, craft employees, office clerical employees, policemen, managerial executives and supervisors within the meaning of the Act".

6. In accordance with the Commission's findings, set forth above, 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 not later than thirty (30) days from the date set forth below.

The Commission does not adopt the Hearing Officer's recommendation that the election shall be conducted solely on a manual basis rather than by a mail ballot.

Since long distances are involved and eligible voters are scattered along the entire route of the Turnpike an election conducted manually would involve a large number of election personnel, long hours and a substantial expenditure of public funds. The Commission finds that the utilization of a mail ballot technique would be warranted because it will be more efficient, less costly and assure a greater opportunity for the employees to express their desires. However, since many of the employees are concentrated in several of the busier toll areas and larger maintenance locations, a valid reason exists to conduct a manual election in those areas where a substantial number of voters are able to appear physically to cast a manual ballot.

Based upon the above the Commission concludes that a basis exists to conduct a combined manual and mail ballot election and directs that the Commission's election officer shall, after consultation with the parties, designate the date(s), hours, and places for the manual election as well as arrangements for the mailing and return of the mail ballots and the counting of all ballots in accordance with the instant Decision and Direction of Election.

Mail Ballots: Those who wish to vote by mail ballots may request a mail ballot from the Executive Director, State of New Jersey Public Employment Relations Commission, Trenton, New Jersey, or his agent, no later than a date to be fixed by him before the election and a mail ballot will be supplied.

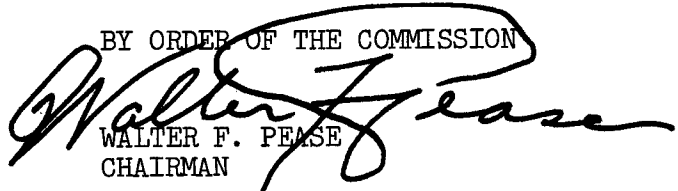
Eligible to vote are all employees listed in Section 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls or must cast a mail ballot 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 purposes of collective negotiations by Local 194, American Federation of Technical Engineers, AFL-CIO; Local 1511, American Federation of State, County and Municipal Employees, AFL-CIO; Local Union 723 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; or none.

The majority representative, if any, shall be determined by a majority of the valid ballots cast. If none of the choices in the election receives a majority of the valid ballots cast, there shall be one run-off election between the two choices receiving the largest and second largest number of votes.

DATED: October 1, 1969
Trenton, New Jersey

BY ORDER OF THE COMMISSION


WALTER F. PEASE
CHAIRMAN

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION

In the Matter of)
NEW JERSEY TURNPIKE AUTHORITY)
and)
LOCAL 194, AMERICAN FEDERATION OF)
TECHNICAL ENGINEERS, AFL-CIO, PETITIONER)
and)
LOCAL 723, INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, INTERVENOR)
and)
LOCAL 1511, AMERICAN FEDERATION OF STATE)
COUNTY AND MUNICIPAL EMPLOYEES, INTERVENOR)

HEARING
OFFICER'S

REPORT

AND
RECOMMENDATIONS

Appearances:

FOR THE NEW JERSEY TURNPIKE AUTHORITY

Grover E. Richman Jr. Esq.
Joseph R. Postizzi Esq.

FOR LOCAL 194, AMERICAN FEDERATION OF TECHNICAL ENGINEERS AFL-CIO

Francis A. Forst, International Representative

FOR LOCAL 1511, AMERICAN FEDERATION OF STATE, COUNTY, MUNICIPAL EMPLOYEES

Sam Bardach, President

FOR LOCAL UNION 723, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Leonard Conte, International Representative

BACKGROUND

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission (herein called the Commission), the undersigned Hearing Officer met with representatives of the parties in New Brunswick, New Jersey on June 5, 1969.

A transcript, which was taken of the proceedings, was delivered to the Hearing Officer on July 6, 1969. The parties participating in the hearing elected not to submit post-hearing briefs.

The basic issue in this case is whether the toll collectors and the maintenance employees of the operating division of the Turnpike Authority should form a single unit for purposes of collective bargaining.

The original employee petition February 4, 1969 was made by Local 194, American Federation of Technical Engineers, AFL-CIO, and named Local 723, International Brotherhood of Teamsters as an intervener in the petition for representation. Subsequently, and before the date of the hearing Local 1511, American Federation of State, County and Municipal Employees also registered a claim for exclusive representation of turnpike employees. The specific group of employees included in the petition was "all toll collectors and maintenance employees of the Operations Division." The petition excluded "all supervisory personnel, office clericals and police." During the course of the hearing all parties agreed that part-time employees should also be excluded from the appropriate unit (see transcript pp. 87-89). The parties are also in agreement that clericals in the operating groups of employees (eg. various clerical-type jobs within the

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maintenance department) are included within the unit claimed by the employee petition. The parties also agreed on the designation of those jobs which would be defined as supervisory.

The prime issue is therefore whether the non-supervisory employees in the category toll collector and the non-supervisory employees in the maintenance category should form a single appropriate unit. The petitioning organization and the two intervening organizations claim that the single unit is appropriate while the Turnpike Authority contests the appropriateness of such a unit and contends that the toll collectors should be in a separate unit from the employees in the maintenance category.

There appears to be no question that the New Jersey Turnpike Authority is a public employer within the meaning of Section 3 (c) of the Act and that it is therefore subject to the provisions of the Act. Similarly, Local 194, American Federation of Technical Engineers AFL-CIO, Local 723, International Brotherhood of Teamsters and local 1511, American Federation of State, County and Municipal Employees are clearly employee representatives within the meaning of Section 3 (e) of the Act.

A second issue in the dispute concerns some of the features for determining the majority bargaining representative. The Turnpike Authority contends that a majority in the election procedure should be based on a majority of eligible voters while the employee organizations argue that it should be based on a majority of the votes cast.

The American Federation of Technical Engineers and the Turnpike Authority contend that balloting in the election to determine the bargaining agent should be by mail. The representatives of both the American Federation of State, County and Municipal Employees and the International Brotherhood of Teamsters argue for a physical ballot with polling stations located at convenient points on the turnpike.

DISCUSSION AND FINDINGS

On the issue of whether the toll and the maintenance employees should be in separate bargaining units the following portion of the Act appears to provide the basis for discussing this dispute:

34:13A-53 "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."

The following portion of the Act is also relevant to the issue:

34:13A-6(d) "The division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit."

The above sections suggest three criteria for determining whether or not separate bargaining units for toll collectors and maintenance employees on the turnpike are appropriate. Under the act if the Turnpike's maintenance employees are predominantly craft employees then the unit determination decision may be based on the "Globe" procedure which gives the craft employees the opportunity to vote on whether they wish to be included in the same unit as the noncraft employees.

The Turnpike Authority did not base their case on the craft-noncraft criterion and the evidence presented at the hearing did not suggest that all the occupations within the maintenance department were well defined crafts. In fact, the job structure in the department contains many occupations which do not require the training and experience normally associated with crafts. (see the occupational structure described in the Document on Personnel Policies, 1965 which was submitted as an exhibit by the International Brotherhood of Teamsters).

A second criterion suggested under the act is the relevance of established practice and prior agreement among the parties. All three employee organizations made this an important feature of their argument for a single unit. They contended that there was a history of bargaining in a single unit made up of both the toll collectors and the maintenance employees. (In support of their contention the aforementioned Document on Personnel Policies 1965 was presented as evidence that the results of the negotiations were contained in a single document covering both toll collectors and maintenance employees.)

In addition, the employee organizations argued that a 1964 case (New Jersey Turnpike Authority and New Jersey Highway Authority Vs. American Federation of State, County and Municipal Employees

et al, Superior Court of New Jersey, Chancery Division, Camden County (e-1087-63), hereafter referred to as "the Judge Wick" decision, was evidence that a bargaining relationship existed prior to the instant hearing. It was also claimed that out of this bargaining relationship emerged statements of personnel policy covering both the toll collectors and the maintenance employees.

The Turnpike Authority challenged this interpretation of Judge Wick's decision and claimed there could be no history of bargaining since there was no such thing as legal collective bargaining before the passage of the Act in 1968.

At the hearing the witness for the American Federation of Technical Engineers testified that bargaining had occurred during the period 1960-1961 and that an agreement (identified as Joint Exhibit #1 "memoranda of agreement") had resulted.

The relevance of a prior bargaining practice does not depend on the legal authority of a labor relations act. Collective bargaining in many instances occurs outside a formal legal structure. The concept of past practice is therefore admissible even though the act covering the present dispute is dated 1968.

It is clear from the testimony that discussions prior to the 1960-61 agreement were concerned with the working conditions of both the toll collectors and maintenance employees and that representatives

of both groups were represented by the employee committee which met with management representatives.

In the opinion of the hearing officer the evidence suggests that there is a history of employee organizations representing both toll and maintenance employees and that the Turnpike Authority negotiated the terms and conditions of employment of both groups of workers within the same negotiating process. According to the testimony in the Judge Wick decision the Turnpike Authority itself stated that:

"On January 1, 1961, the Turnpike jointly executed with the defendant Local 1511, a 'Statement on Employees Relations Policy' setting forth wages, hours and working conditions for its toll and maintenance employees for the period commencing January 1, 1961 and terminating January 11, 1964." (p.2)

The fact that the negotiations during the period 1960-61 resulted in two separate mimeographed documents (Joint Exhibit #1) does not negate the existence of the prior practice of a single negotiating process covering both the toll collectors and the maintenance employees. An examination of these two documents shows they contain substantially the same material. Several sections, such as the conditions governing the hours of work, are of course different. This is because the work load during the average week is different in each department. This type of difference in content does not in any way prove a history of separate

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bargaining units. The evidence shows that the Turnpike Authority held meeting with representatives of its employees in the maintenance and toll department. These discussions: (1) were conducted with an employee organization representing both toll and maintenance employees; (2) constituted a single negotiating process which was initiated to deal with the future working conditions of both groups of employees; (3) the employee negotiating team consisted of representatives of both the toll collectors and the maintenance employees. This evidence suggests a history of negotiations for toll and maintenance employees in a single unit.

As indicated in the Act a crucial criterion in the unit determination question is whether there is a community of interest among the two groups of employees. In the opinion of the hearing officer there is sufficient community of interest among the two groups of employees to recommend a single bargaining unit.

A public service such as a toll road has obviously some unique characteristics compared with many other services which are supplied to the consumer by both the public and private sectors.

A major characteristic of the operation of the turnpike is that the employees directly involved in operations are based at work stations which are widely dispersed along the length of the one hundred and thirteen mile road. This means that in the day to day supply of the service there is no physical contact among the employees from the various work stations.

In the present case the toll collectors are distributed among 21 work stations and the maintenance employees work out of some 7 work stations most of which are separate from locations at which the toll collectors are based. Lack of close geographic proximity among employees (both toll collectors and maintenance employees), however does not in itself mean that there is a low degree of community of interest among the employees. If the argument based on geographic location is carried to its logical extreme there would be 21 separate units for each of the toll locations and similarly for the maintenance workers. This result would certainly not enhance the purposes of the Act by minimizing labor disputes.

There are many examples in both the private and public sectors of employees working in widely dispersed geographic locations (eg. the merchant marine industry, electric utility industry, airline industry etc.) and at the same time having a close community of interest. It is therefore clear that two separate units cannot be justified for the operating personnel on the turnpike on the basis of physical location.

A high degree of community of interest is usually associated with a close functional work relationship among the various groups of employees. Does, for example, the successful performance of the toll collectors job at interchange number 2 depend on the job done by the toll collectors at interchange number 1? There is,

of course, a certain amount of interdependence between both groups of toll collectors but the successful performance of the job at the toll booth is also equally dependent on the operation of machinery at the various toll stations and the quality of maintenance on the highway. The work system associated with turnpike service is a highly integrated operation where there is just as close a functional relationship between the employees at a particular maintenance location and a toll interchange station as there is between toll collectors at two different toll interchanges.

The case for finding a strong community of interests among the toll collectors and the maintenance employees is also supported when the interests of the employees are considered. Both groups of employees while in separate departments are within the operating division of the Turnpike Authority; they have similar fringe benefits, grievance procedures, and basic hours of work. Some features of the working conditions differ such as the scheduling of the hours of work and rates of pay, but these differences are not substantial enough to seriously affect the strong community of employee interests. Similarly, the existence of departmental seniority as opposed to division-wide or company-wide seniority for non-fringe conditions conforms to the practice found in most American industries and does not affect the strong case for a single unit covering both the toll collectors and the maintenance employees.

The second major issue in the dispute concerns the election procedure. The hearing officer considers the election procedure to be an administrative matter, the details of which will be covered by the Public Employment Relations Commission's rules for the conduct of elections. However, since several points raised in the hearing may not have come before the Commission in previous cases recommendations on these points will be included in this report.

On the issue of the votes necessary to constitute majority in an election it is recommended that a majority of the votes cast in the election be necessary to win an election. The case for requiring a majority of eligible voters in order to win the election is not based on valid logic since it assumes that all those not voting do not wish the employee organizations to represent them. Such an assumption may or may not be true since it is indeterminate without participation in a voting procedure. As a corollary to this point it is recommended that the choice of "neither of the organizations" be designated on the ballot.

In the event that no choice on the ballot receives a majority of the votes it is recommended that a "run-off" election be held between the two choices receiving the most votes. It is also recommended that the position of the names of the parties which have satisfied "a showing of interest" to the commission and including the choice "neither of the organizations" be selected by choosing straws.

The hearing officer has given careful consideration to the arguments for a mail ballot rather than a physical ballot. The fact that the employees are dispersed over a wide geographic area and are subject to unusual hours of work does pose certain problems in conducting an election. However, the hearing officer does not consider these insurmountable and recommends to the Commission that sufficient polling stations be (1) located at convenient points on the turnpike and (2) open long enough so that no employees will be subjected to undue hardship in attempting to cast his ballot. Many years of experience in labor relations in both the private and public sectors have demonstrated that a physical ballot is more reliable than a mail ballot because (1) some employees may be disenfranchised because mailing addresses are not up to date and (2) the secrecy of the ballot is better protected in a poll booth.

RECOMMENDATIONS

The hearing officer hereby recommends to the commission as follows:

(1) All toll collectors and maintenance employees in the Operations Division of the New Jersey Turnpike Authority excluding all supervisory employees, office clericals, police and part-time employees constitute a single appropriate bargaining unit.

(2) The election procedure used to determine the preference of the employees in the above unit should conform to the general administrative practice developed by the New Jersey Public Employment Relations Commission. In this particular election it is also recommended that the following procedures be included in the conduct of election:

(a) The winner of the election is the choice which receives a majority of the votes cast.

(b) In the event that no choice receives a majority of the votes cast a run-off election should be held between the two choices receiving the highest number of votes.

(c) The employees should have the opportunity to vote for "no organization" or "neither organizations" or "none of the organizations" depending on the number of employee organizations eligible to be placed on the ballot.

(d) The positions of the choices on the ballot should be chosen by drawing lots in the presence of representatives

of the interested parties.

(e) The election procedure should utilize a physical ballot placed in a ballot box rather than a mail ballot.

Respectfully submitted

Kenneth McLennan

Kenneth McLennan
Hearing Officer

August 14, 1969