P.E.R.C. NO. 50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(NEURO PSYCHIATRIC INSTITUTE, et al)

Public Employer

and

Docket Nos. R-93, 95, 100
101, 129, 130
RO-27

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO AND CERTAIN AFFILIATED LOCALS 1/

Petitioner

STATE OF NEW JERSEY
(TRENTON STATE HOSPITAL)

Public Employer

and

Docket No. R-127

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

Petitioner

and

COUNCIL #1, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Intervenor

1/ More particularly described in Hearing Officer Knowlton's Report and Recommendations. The name of the Petitioner in RO-27 is corrected to read Morris County Public Employees Local 1966, AFSCME, AFL-CIO to accord with the record evidence.

In the Matter of

STATE OF NEW JERSEY

Employer-Petitioner

and Docket No. RE-8

COUNCIL #1, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

NEW JERSEY CIVIL SERVICE ASSOCIATION

AND

NEW JERSEY STATE EMPLOYEES ASSOCIATION

Parties to the Case

STATE OF NEW JERSEY
(DEPARTMENT OF TRANSPORTATION)

Public Employer

and Docket No. R-94

AMERICAN FEDERATION OF TECHNICAL ENGINEERS LOCAL 195, AFL-CIO

Petitioner

and

NEW JERSEY CIVIL SERVICE ASSOCIATION

Intervenor

In the Matter of

STATE OF NEW JERSEY
(GREYSTONE PARK STATE HOSPITAL)

Public Employer

and Docket No. R-91

LOCAL 821, UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, AFL-CIO

Petitioner

STATE OF NEW JERSEY

Employer-Petitioner

and Docket No. RE-10

AMERICAN FEDERATION OF TECHNICAL ENGINEERS,
AFL-CIO

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

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

and

NEW JERSEY CIVIL SERVICE ASSOCIATION

and

NEW JERSEY STATE EMPLOYEES ASSOCIATION

Parties to the Case

DECISION, ORDER AND DIRECTION OF ELECTIONS 2/

The above captioned cases raise questions concerning the representation of certain employees of the State of New Jersey employed in various institutions and departments throughout the State. Hearings were

2/ By Orders previously issued, all the above cases have been consolidated for purposes of decision.

held in 1969 and 1970 on all petitions except RE-8 and RE-10 for which no hearings have been scheduled. In Case No. R-127, Trenton State Hospital, ad hoc Hearing Officer Milton Friedman issued his Report on November 27, 1970 recommending that an election be conducted in a unit substantially larger than that sought by Petitioner, C.W.A. No exceptions have been filed to that Report and Recommendation. In Case No. R-91, Greystone Park State Hospital, ad hoc Hearing Officer Joseph F. Wildebush issued his Report on December 2, 1970 finding the unit petitioned for to be inappropriate. No exceptions have been filed to that Report and Recommendation. The remainder of the above captioned cases, excluding RE-8 and RE-10, had been consolidated for hearing before ad hoc Hearing Officer Thomas A. Knowlton. His Report issued December 15, 1970 and therein he recommended essentially the establishment of two units, both state-wide in scope, one composed of those employed in "Health, Care, and Rehabilitation Services", the other composed of "Operations, Maintenance, Services and Craft Employees". Exceptions have been filed to that Report and Recommendation by the New Jersey Civil Service Association. 3/

3/ Exception is taken on the ground that the unit determination disregards the applicability of Title 11 (Civil Service) and is contrary to provisions of Chapter 303 which insure the continuing vitality of that Title. The exceptions do not indicate the particulars behind these conclusions except to say that "...a large portion of the membership within each unit are State employees..." subject to Title 11. Nor do the exceptions specify that a different unit should have been recommended as appropriate. A review of the Hearing Officer's Report does not indicate a disregard for Title 11 or a failure to observe the caveat in Chapter 303 that there be no infringement upon Civil Service laws or regulations. The rejection by the Hearing Officer of CSA's unit contention does not constitute such disregard. As will be seen below, the Commission likewise finds contrary to the CSA unit contention, but in doing so has clearly not disregarded the implications of Title 11. In short, the exceptions, as stated, do not put in issue any finding, recommendation or conclusion of the Hearing Officer. Accordingly, the exceptions are found to be without merit.

The essential question initially raised by these petitions was scope of unit. AFSCME through various locals had petitioned for separate units of "blue collar" employees at each of certain institutions in the Divisions of Correction and Parole, Mental Retardation, and Mental Health, all within the State's Department of Institutions and Agencies. CWA likewise sought a unit restricted to one institution, Trenton State Hospital, and composed of all employees excluding clerical, professional, supervisory, administrative and security personnel. AFTE's petition sought to establish three units within the Department of Transportation - clerical, blue collar, and engineering type classification. Local 821, Carpenters, sought to represent "craft maintenance" employees in the Engineering and Upholstery Departments at Greystone Park. The State, as the employer, contested the appropriateness of these single institutional and departmental units claiming fundamentally that only units state-wide in scope were appropriate, and that, with respect to these proceedings, the composition of such units should be determined by broad occupational objectives. Specifically, the Employer proposed state-wide units styled "Health, Care and Rehabilitation Services"4/, "Operations, Maintenance and Services" 5/ and "Crafts" which together would absorb the great majority of classifications sought by petitioning employee organizations in these proceedings. The New Jersey Civil Service Association, an intervenor in one of the cases, contended that a single state-wide unit of all classified State employees was the only appropriate grouping. 6/

4/ To include those engaged in para-medical and support functions for the health, care and rehabilitation of the physically or mentally ill or handicapped.

5/ To include those engaged in construction, maintenance, fabrication, etc.; the operation of equipment and vehicles; the provision of domestic and institutional services.

6/ While CSA maintained this position, it did not have standing to pursue it since it did not establish the necessary 30% showing of interest in such a unit. See Section 19:11-13 of the Commission's Rules and Regulations.

Subsequent to the close of the Knowlton, Wildebush and Friedman hearings, Council 1, AFSCME addressed to the Employer a claim that it represented for bargaining purposes a majority of the employees in the unit of Health, Care and Rehabilitation Services and it requested recognition as exclusive representative for that unit. Likewise, AFTE informed the Employer that its Local 195 had been authorized by a majority of employees in a unit of Operations, Maintenance, Services and Craft employees to represent them for purposes of collective bargaining, and it requested the commencement of negotiations. The Employer declined both requests and filed separate petitions, RE-8 and RE-10, seeking elections in the units for which AFSCME and AFTE, respectively, claimed majority support. Notice of these developments was given to Hearing Officers Friedman and Knowlton and, as their Reports indicate, these changes in positions were taken into account. While, as earlier noted, CWA did not file exceptions to the Friedman Report, it does object to the Hearing Officer's consideration of and reliance upon the post hearing change of position by AFSCME with respect to the Health, Care and Rehabilitation Services unit. At the very least, it argues, it was entitled to be heard on the question of whether this change in position should be considered. We find no merit to this objection. So long as a later change in position can be accommodated to the record already made, which is the case here, we perceive no reason why the current position should not be considered, or conversely, why a party should be bound to a prior position which it no longer adopts.

The sum of the foregoing is that AFSCME and AFTE have abandoned their earlier claims for institutional and departmental units in favor of positions which basically accord with the Employer's unit positions. Furthermore, three Hearing Officers have made recommendations which directly or by implication are in harmony with this accord and no party adversely affected has filed meaningful exceptions to these recommendations. Normally in the absence of exceptions, the Commission will adopt a Hearing Officer's recommendation without comment as long as it is not inconsistent with the Act's requirements and objectives. There is no such inconsistency here. 7/ However, what is done here will affect other petitions now pending, but not consolidated herein, for which no hearings have been scheduled, and which either intrude on units to be found here or at least pose common issues. Therefore the Commission will set forth its views on the basic questions involved in the instant cases.

Regarding the threshhold question of scope of unit, the consolidated records amply demonstrate the appropriateness of the concept of the statewide unit. We begin with the elementary observation that the Employer is not Trenton State Hospital, Greystone Park State Hospital, Department of Transportation, or any other like facility or administrative unit involved in these proceedings; rather it is the State in the person of the Chief Executive. Most of the petitioners have implicitly recognized this fact as indicated on the face of their petitions wherein the Employer is identified as the State of New Jersey. Indeed, no party to these proceedings

7/ The findings and recommendations in those three reports are therefore adopted except as modified below.

has seriously argued to the contrary. 8/

The units petitioned for by employee organizations fall within either the Department of Institutions and Agencies or the Department of Transportation, both of which are constitutionally established within the jurisdiction and responsibility of the executive branch of state government. Of necessity, authority is vested locally for day to day operational matters and in certain areas affecting terms and conditions of employment, e.g., the assignment of personnel, designation of shift times, employee evaluation, etc. But local authority in the more significant aspects of labor relations is pre-empted principally by operation of the provisions of Title 11, N.J.S.A., Civil Service. That Title reserves to the Civil Service Commission, subject to legislative action or within its own right by regulation, inter alia, the determination of compensation plans; the regulation of hours of work, sick and vacation leave, holidays, travel and per diem allowances, and overtime; the establishment of classification plans, job qualifications, eligibility of applicants for appointment and promotion, and procedures and grounds for demotion and removal. All of the foregoing powers and duties relate to the classified service which embraces approximately 80% of the total complement of state employees. An even greater percentage of the employees involved in these proceedings are within the classified service. Another pre-emption of local authority is found in the Salary Adjustment Commission, composed of the President of the Civil Service Commission, State Treasurer, Comptroller and Director of the Division of Budget and Accounting, and the Legislative Finance Director. That Commission's approval must be obtained before an employee may receive a wage adjustment out of the normal sequence or before an employee may be hired above the entry wage level.

8/ Cf. Association of New Jersey State College Faculties, Inc. v. Board of Higher Education et al, 112 N.J. Super 237 (Law Div. 1970), wherein the Association in effect sought a judgment declaring the Board to be the employer. The court ruled against the Association, finding the Governor, as Chief Executive, to be the employer.

In certain fundamental areas, of course, it is legislative action which dictates, and thus local authority becomes even farther removed from the decision making process. The Governor, as the one responsible for the submission of a unified budget and the one who must scrutinize and approve each agency request, is normally more favorably positioned to influence the appropriation of funds necessary to implement economic benefits for employees of the executive branch. And in any event the Governor is the person ultimately responsible for the proper disposition of funds appropriated. In the areas of medical benefits and pension system, the Legislature has enacted programs of uniform application for all state employees.

A more recent indication of the centralization of labor relations at the highest administrative level is the creation by former Governor Hughes of a State Employee Relations Policy Council to perform the functions denoted by that title. Governor Cahill continued the concept when, by Executive Order, he created the Governor's Employee Relations Policy Council composed of the Treasurer, Secretary of State, President of the Civil Service Commission, Comptroller and Director of the Division of Budget and Accounting, Counsel to the Governor and the Director of the Office of Employee Relations. The purpose of the Council is to review, assess and appraise the policy of the State with respect to employee relations and to make recommendations to the Governor regarding such matters. In addition to the Council, the Governor simultaneously established the Office of Employee Relations whose Director is charged with assisting the Council, acting as the Governor's agent in the conduct of collective

negotiations, and appearing on the Governor's behalf before any agency or court in matters regarding employee relations. The Employer's intent, obviously, is to speak with one voice.

Not only is the Commission satisfied that the units to be determined in this proceeding should, regardless of their composition, be state-wide in scope, but it is equally satisfied that units sought here on any basis less than state-wide in terms of occupational coverage are inappropriate. 9/ That is to say that the Commission does not find units of different scope to be equally appropriate with the final determination of unit boundaries left to employee choice as was done, for example, in Camden County, Board of Chosen Freeholders, PERC No. 28. The same reasons supporting the state-wide approach compel the rejection of more restricted units. The administrative make-up of the Employer; the concentration, at the highest level, of responsibility for policy and authority to regulate and implement the most significant aspects of labor relations; the obligation implicit in the concept of Civil Service to insure equality of employment opportunity and uniformity of treatment once employed, and in consequence of that obligation, the basic consistency of terms and conditions of employment throughout the state for employees engaged in essentially like functions - and for certain terms such as fringe benefits, a consistency regardless of function; for all these reasons units limited to individual institutions, departments or sub-divisions thereof can scarcely be appropriate for purposes of collective negotiations. No doubt, a kind of community of interest can be said to exist among blue

9/ The Commission is unable to adopt Hearing Officer Friedman's conclusion that the State's proposed unit is "more appropriate" than CWA's institutional unit. (R-127) That conclusion suggests that neither unit is inappropriate.

collar employees at a single institution if for no other reason than because they perform similar duties at one location under the direction of a local administrator. But that does not negate the possibility of a stronger, broader and higher level of common interest which threads through various administrative units and which derives from the fact that employee terms and conditions in greatest measure are established by a central authority superior to the local administrator, in councils to which he is a stranger and in response to conditions and requirements that transcend the parochial. This "possibility" is, in fact, essentially the case here. To establish units which ignore this more substantial community of interest would, in effect, be an attempt to reform the administrative behavior of the Employer. One of the basic arguments advanced in support of separate institutional units is that local authority can effectively respond to the demands of a majority representative. Whether he can or not is almost academic in view of the fact that traditionally the principal terms and conditions of employment have been established outside the sphere of his authority and influence. 10/ Unit determination should not be the vehicle for attempted reform. Community of interest measures conditions as they are, not as they might be.

Rejection of the institutional type unit is not a failure to recognize the existence of employee relations' problems peculiar to

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10/ The records disclose several occasions where employee organizations have been able to force, through the threat and/or fact of a strike, certain institutions or departments to accede to the demands of their employees. Other instances are offered to show that satisfaction of employee demands was achieved through legislative action. In their most favorable light, these situations are little more than aberrations. Generally, whatever gains were achieved for the employees involved in exerting the pressure resulted in favorable modifications for uninvolved employees who were nevertheless similarly situated.

individual institutions. Unquestionably, local frictions do and will exist, having no impact outside the walls of an institution, and susceptible to resolution locally without recourse to higher authority. As to those limited matters within the ambit of local authority, it is the Commission's expectation (assuming that an exclusive representative exists) that problems in this area will be resolved through local negotiations which supplement negotiations at the higher level.

To summarize, the Commission finds that units sought in these proceedings which are less than state-wide in scope are inappropriate for purposes of collective negotiations. Accordingly, petitions for such units will be dismissed. As a result of that action, only two petitions of those previously consolidated now survive, RE-8 and RE-10, each of which seeks an election in a state-wide unit.

The second basic question raised in these proceedings is composition of unit. What has been said regarding scope is not dispositive of unit composition. There are, for example, some 2800 classifications of State employees and such might conceivably produce hundreds, perhaps thousands, of state-wide units. On the other hand, CSA maintains there should be only one state-wide unit for all classified employees. The Employer proposes nine basic units, three of which are now involved in the instant cases. 11/ As to those three, there now exist two employee organi-

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11/ The Employer originally proposed a separate unit for all craft employees apparently because the statute requires craft separation unless the majority of craftsmen vote to be included with non-craft employees. AFTE's current claim of majority standing embraces, within one unit, craft employees as well as those engaged in Operations, Maintenance and Services. In any event, craft employees are entitled to the option of separate representation. No finding has been made that there existed an established practice, prior agreement or special circumstances dictating craft inclusion with non-craft. See 34:13A-6(d). The Commission sees no substantial difference between the Employer and AFTE positions regarding craft employees.

zations which agree with the Employer regarding unit scope and composition. Furthermore,each of these organizations has made a claim of majority standing: AFSCME in a unit of Health, Care and Rehabilitation Services, and AFTE in a unit of Operations, Maintenance, Services and Craft Employees.

The Commission finds nothing inherently objectionable in the make-up of these two units. Certainly the desires and agreements of the parties should be accorded substantial weight. In fact, in the absence of some very substantial and compelling reason, the Commission would not upset such agreements. However, the question arises as to the definition of "parties." Clearly, CWA, CSA, and SEA 12/ do not agree to the composition of the units outlined above. While CWA's disagreement over composition is no longer meaningful in view of the fact that it did not seek state-wide units in the first place, CSA and SEA are differently situated in that both maintain that a single state-wide unit is appropriate. Both organizations are listed on the Employer's petitions in response to the petition's form language requesting the names of employee organizations "which have claimed to represent any of the employees in the unit set forth [above]...." However, nothing in the consolidated records indicates that either organization has made a formal claim upon the Employer or the Commission as the majority representative in a single state-wide unit. In other words, although CSA and SEA have a unit position they contend for, neither has pursued it to the point of claiming majority standing or

12/ SEA did not make a formal appearance in any of the litigated cases. In response to the filing of RE-8 and RE-10, wherein the Employer named it as an interested party, it is reported to contend for a single state-wide unit of all employees.

requesting recognition in that unit. If these were the only two organizations involved, the Employer could not have properly filed a petition. 13/ On the other hand, neither organization has filed a petition for such a unit; nor did it intervene on any other employee organization's petition to the point of supporting its unit contention with a 30% showing of interest. Considering all the circumstances, the Commission concludes that the interests of CSA and SEA are not shown to be so substantially grounded that their unit contention should be permitted to frustrate the agreements between the Employer and AFSCME, the Employer and AFTE. This conclusion in no way affects the opportunity or qualification of CWA, CSA and SEA to appear on the ballots in the elections to be directed herein.

In summary the Commission finds as follows:

1. The State of New Jersey is a public employer within the meaning of the Act and is subject to its provisions.
2. Council #1, American Federation of State, County, and Municipal Employees, AFL-CIO; Local 195, American Federation of Technical Engineers, AFL-CIO; Communications Workers of America, AFL-CIO; New Jersey Civil Service Association; and New Jersey State Employees Association are employee representatives within the meaning of the Act.
3. The Public Employer refuses to recognize any employee representative as the exclusive representative of the employees in the units involved. There are therefore questions concerning representation of public employees.

13/ Under Sections 19:11-1(b) and 19:11-4 of the Commission's Rules and Regulations, the Employer must be confronted with a claim of majority standing, and must in good faith doubt that claim before it may properly petition for an election.

4. The following units are found to be appropriate for purposes of collective negotiations.

Case No. RE-8

All Health, Care and Rehabilitation Services employees employed by the State of New Jersey excluding all office clerical, professional and craft employees, policemen, managerial executives and supervisors within the meaning of the Act and all other employees.

Case No. RE-10

Voting Group 1

All Operations, Maintenance and Services employees employed by the State of New Jersey, excluding all office clerical, professional and craft employees, policemen, managerial executives and supervisors within the meaning of the Act and all other employees.

Voting Group 2

All craft employees employed by the State of New Jersey excluding all office clerical and professional employees, policemen, managerial executives and supervisors within the meaning of the Act and all other employees. 14/

14/ Employees in Voting Group 2 shall vote as to whether or not they desire to be included with non-craft employees (Voting Group 1). If a majority of the craft employees voting vote for such inclusion, their ballots shall be tallied with those in Voting Group 1, all ballots shall be counted at face value and an appropriate certification shall issue covering Voting Groups 1 and 2. If the craft employees do not wish to be included with the non-craft employees, their ballots shall be counted separately and an appropriate certification will issue for Voting Group 2.

ORDER

IT IS HEREBY ORDERED that the petitions in Cases Nos. R-91, R-93, R-94, R-95, R-100, R-101, R-127, R-129, R-130 and RO-27 be, and they are, dismissed for the reason that they seek units found to be inappropriate for purposes of collective negotiations. In addition, the Commission has been administratively advised that there are other petitions now pending, not consolidated herein and not yet scheduled for hearing, which name the State of New Jersey as the employer. These petitions seek units less than state-wide in scope and which are only segments of the units found appropriate here. As a result of these proceedings, such units are inappropriate on their face and petitions for them are subject to dismissal without hearing. Accordingly, the Commission authorizes the Executive Director to solicit the withdrawal of these petitions and, absent withdrawal, orders their dismissal.

DIRECTION OF ELECTIONS

Because of the complexities involved in conducting elections in units of this size, the Commission must modify some of its normal procedures. The elections should be conducted at the earliest time or times feasible; the normal 30 day period from date of decision will not apply, however. The normal cutoff date for determining eligibility - the payroll proceeding the date of decision - may or may not apply. The eligibility date will be fixed at a subsequent time when the approximate time for conducting the elections is established. Other modifications may be made as the need becomes apparent.

The elections shall be by mail ballot. 15/

The Executive Director shall call a meeting or meetings of all parties to determine what job titles are included within the resepective units found appropriate. It is expected that the vast majority of titles can be allocated by mutual consent.

In Case No. RE-8, those eligible to vote shall vote on whether they wish to be represented for purposes of collective negotiations by Council #1, American Federation of State, County and Municipal Employees, AFL-CIO; New Jersey Civil Service Association; Communications Workers of America;AFL-CIO; New Jersey State Employees Association; or none.

In Case No. RE-10, those eligible to vote in Group 1 shall vote on whether they wish to be represented for purposes of collective negotiations by Local 195, American Federation of Technical Engineers,AFL-CIO; Council #1, American Federation of State, County and Municipal Employees;AFL-CIO; New Jersey Civil Service Association; Communications Workers of America;AFL-CIO; New Jersey State Employees Association; or none.

Those eligible to vote in Group 2 shall vote on the question "Do you wish to be represented with non-craft employees?" They shall also vote on whether they wish to be represented for purposes of collective negotiations by Local 195, American Federation of Technical Engineers; AFL-CIO; Council #1, American Federation of State, County and Municipal Employees,AFL-CIO; New Jersey Civil Service Association; Communications Workers of America,AFL-CIO; New Jersey State Employees Association; or none. 16/

15/ In sending ballots to eligible employees, the Commission will use first class mail, not registered or certified mail.

16/ If any of the parties named do not wish to appear on any one or more or the ballots as indicated above, it should so notify the Executive Director promptly.

When the necessary details have finally been arranged for the conduct of these elections, the Executive Director will serve notice of such on each of the parties and such notice will supplement this Direction.

BY ORDER OF THE COMMISSION

William L. Kirchner, Jr.
Acting Chairman

DATED: January 15, 1971
Trenton, New Jersey

STATE OF NEW JERSEY

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE OF NEW JERSEY, NEW JERSEY NEURO PSYCHIATRIC INSTITUTE, Public Employer, - and - SOMERSET COUNTY LOCAL 1969 AFSCME, AFL-CIO Petitioner.	R-93
NEW JERSEY TRANSPORTATION DEPARTMENT Public Employer, - and - AMERICAN FEDERATION OF TECHNICAL ENGINEERS, LOCAL 195, AFL-CIO, Petitioner.	R-94
STATE OF NEW JERSEY, MARLBORO STATE HOSPITAL, Public Employer, - and - MONMOUTH COUNTY LOCAL 1967, AFSCME, AFL-CIO Petitioner.	R-95
STATE OF NEW JERSEY, NEW JERSEY TRAINING SCHOOL - TOTOWA, Public Employer, - and - PASSAIC COUNTY LOCAL 1960 AFSCME, AFL-CIO, Petitioner.	R-100

STATE OF NEW JERSEY, SANITORIUM FOR CHEST DISEASES, Public Employer, - and - HUNTERDON COUNTY LOCAL 1962, AFSCME, AFL-CIO Petitioner.	R-101
ANCORA STATE HOSPITAL, Public Employer, - and - CAMDEN COUNTY LOCAL 1965, AFSCME, AFL-CIO Petitioner.	R-129
NEW JERSEY REFORMATORY FOR WOMEN, Public Employer, - and - HUNTERDON COUNTY LOCAL 1962, AFSCME, AFL-CIO Petitioner.	R-130
GREYSTONE PARK HOSPITAL, Public Employer, - and - MONMOUTH COUNTY LOCAL 1967, AFSCME, AFL-CIO Petitioner.	RO-27

REPORT AND RECOMMENDATION OF HEARING OFFICER

The undersigned duly designated hearing officer conducted a hearing in Docket #R-94 on September 18, 1969.

By direction of the Commission dated October 10, 1969, Dockets #R-93, #R-94, #R-95, #R-100, #R-101, #R-129 and #R-130 were consolidated. Hearings on this consolidated case were held on October 30, 1969 and November 10, 1969.

On November 10, at the direction of the hearing officer and with the consent of the parties, the record of hearing of September 18 in Docket #R-94 was made a part of the record of the consolidated case.

In a further order of the Commission dated December 12, 1969, an additional Docket: #RO-27, was consolidated with the other Docket numbers. Hearings were held on this consolidated case on December 17 and 18, 1969, February 6 and April 28, 1970. The parties: the State, the Petitioners and the Intervenor in Docket #R-94* were represented at the hearings. A full opportunity was afforded to all parties to present such testimony and

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*The New Jersey Civil Service Association
The New Jersey State Employees Association was represented at the first hearing but did not "intervene" in the proceedings with respect to any of the Dockets which were consolidated in the hearings.

evidence as they desired; to examine witnesses; to argue orally on all relevant questions and to submit post-hearing briefs in support of their positions.*

Subsequent to the submission of the post-hearing briefs, the hearing officer was informed by the Commission that the Petitioner in Docket #R-94 had amended the position which it had taken during the hearings and in its post-hearing brief, by letter to the State dated October 19, 1970. This letter indicated that the Petitioner, the American Federation of Technical Engineers, claims to represent ". . . a majority of New Jersey State employees, employed within an appropriate state-wide unit encompassing Maintenance Services, Operations and Crafts . . ." for the purpose of collective bargaining. The Commission forwarded to the hearing officer a copy of a petition, Docket #RE-10, which was filed by the State on November 9, 1970 which indicates that the request for recognition was made on October 19 for "all Operations, Maintenance and Service Employees and all Craft Employees employed by the State of New Jersey" excluding "all other State employees including managerial executives, professional employees and supervisors as defined in New Jersey Employer-Employee Relations Act." The State petition also indicates that the request for recognition was denied on November 5, 1970.

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*No post-hearing brief was filed by the Intervenor.

I interpret this Petition as constituting a recognition by the State of the changed position of the Petitioner with respect to the collective negotiating unit claimed to be appropriate. From a comparison of the Petitioner's letter of October 19 and the statement of the unit set forth in the petition filed by the State, I assume that no difference now exists between the State and Petitioner in Docket #R-94 with respect to the dimensions of the appropriate negotiating unit.

It is to be noted that the unit which is now deemed appropriate by the Petitioner and which is described both in the Petitioner's letter and in the State's petition includes "All Craft Employees" and "All Operations, Maintenance and Services Employees." The State's position, as it was presented at the hearing, indicated that the "Crafts" and the "Operations, Maintenance and Services" groups were properly to be considered as separate units (see State Exhibit 15). I interpret the statute as generally requiring a separate vote by the Craft Employees before they are included in a unit combining Craft and Non-Craft Employees (C.34: 13 A-6 (d)). I have no information as to whether there is any claim by the State or petitioning Union of "special circumstances" or "established practice" or "prior agreement," as those terms are used in the Act, which would justify a recommendation that the vote of the Craft and Non-Craft employees be lumped together.

The Intervenor's position with respect to the unit which is deemed appropriate in Docket #RE-10 has not been precisely set forth so far as I am aware.

However, counsel for the Intervenor indicated his belief that employees who supervise or discipline or effectively recommend discipline or who direct other employees in their everyday work should not be included in the same unit as the employees whom they direct (Tr. 394-395).

Early in the hearings, counsel for the Intervenor took the position in connection with the petition filed in Docket #R-94 that ". . . the appropriate unit is and should be . . . on a statewide basis, that we have classified services, all employees are hired through competitive examinations and are transferred throughout the State and are entitled to work throughout the State in the same classification." This position was supported by argument of counsel relating to the requirements of "Title 11" which governs the employment of civil service employees (Tr. p. 74 et. seq.).

Witnesses who testified in behalf of the Civil Service Association (Tr. 617-644) indicated the interest of the Association in pursuing its efforts in behalf of <u>all</u> public employees of the State (emphasis supplied). I think it is clear from the testimony that the efforts of the Association, as described in the testimony, have been generally political in the sense that they have sought to accomplish their economic purposes by

legislative petition and by lobbying rather than by pressures applied to the State's executive and administrative organization.

Also subsequent to the receipt of the post-hearing briefs, the hearing officer was informed by the Commission that an amended request for recognition had been made by the Petitioners in Dockets #RO-27, #R-93, #R-95, #R-100, #R-101, #R-129 and #R-130 in a letter to the State dated September 23 by the International Union's Director of Organization in behalf of the various local unions which had petitioned separately initially.

In this letter the American Federation of State, County, and Municipal Employees, AFL-CIO, requested recognition in a unit consisting of all employees in the "Health, Care and Rehabilitation Services of the State." The Commission forwarded to me a copy of a petition filed by the State (RE-8) on October 7, 1970 in which the State indicated that the request for recognition as majority representative was made by the Union on September 23 for a unit consisting of "All Health, Care, Rehabilitation Services Employees employed by the State of New Jersey," excluding "all other State employees, including professionals and supervisors as defined in [the Act]." This request for representation was declined on October 1, 1970.

I interpret this petition as constituting a recognition by the State of the Petitioners' change in position as that position had been set forth at the hearings and in the post-hearing brief. It is to be noted that the unit as described in the petition is identical with the definition proposed by the State for a unit of "Health, Care and Rehabilitation Services" in the hearings (see State Exhibit 15).

RECOMMENDATION

I am not certain that there exists any authority for the recommendation which follows. The Act states (C.34-13A-5.13, paragraph 7) that "The negotiating unit shall be defined with due regard for the community of interest among the employees eoncerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute."

I am not aware of any presently existing dispute between the State and the Petitioners in this consolidated case. I am not certain that there is a dispute between the Petitioner and the Intervenor in Docket R-94 as amended in RE-10. A unit of "All Operations, Maintenance and Services Employees and all Craft Employees . . ." is, of course, a state-wide unit. It encompasses employees in 10 different State Departments in the case of the Crafts and 14 different State Departments in the case of the Operations, Maintenance and Service Employees. The total number of departments, if both groups are consolidated in the over-all unit is 14 (see State Exhibit 16).

Neither am I sure that there is a dispute between the Petitioner and the State on the one hand and the Association

on the other if the Association is recognized as Intervenor in what is now Docket RE-8. The "Health, Care and Rehabilitation Services of the State" is a state-wide unit encompassing employees in four different departments: Labor and Industry; Education; Higher Education; and Institutions and Agencies (State Exhibit #16).

It is my recommendation, if a dispute is found to exist at this time in either instance, that the unit which has apparently been agreed upon by the American Federation of Technical Engineers and the State in Docket RE-10 and the unit which has apparently been agreed upon by the State and the AFSCME in Docket RE-8 be found by the Commission to be appropriate units for the purpose of determining a majority representative of the employees, if any.

My recommendation is based generally on the two-fold proposition that the Act obviously intends the establishment of more than one unit of all State employees, and that, in the absence of some special considerations, the larger and more inclusive the unit, the better.

More specifically, while the criteria which are set forth in the statute are not precise, I assume that "community of interest" is not to be equated with "extent or organization." I would define the phrase to encompass those groups of employees, less than the totality, who have special reason for separate and similar treatment by the State: for example, classes of

employees who have specialized training and qualifications, or classes of employees whose terms of public employment are primarily established in the private sector. One may find various levels of "communities of interest" but, in the final analysis, what is required by the statute is that they be accorded "due regard" in defining the appropriate unit.

In this connection it is quite probable that, within any appropriate bargaining unit, there will be identifiable groups with special interests. These may exist on a geographical basis or by reason of other considerations which are recognized by both parties as worthy of attention. I doubt that "local understandings" within a larger framework can be or should be eliminated. Grievances, or local misunderstandings are not necessarily as wide as the bargaining units -- either in their cause or in their resolution. This is especially true where agreements contain machinery for finally resolving grievances.

It is an error, I believe, to conclude that large units are intrinsically less appropriate: less "efficient," less "stable," or more hazardous to the public interest -- however defined -- than are small units.

On the contrary, I believe that, in public employment, the generally deleterious effects of competition between collective bargaining entities outweigh the possible advantages of a multiplicity of units, each of which gives

full recognition to special interests. "Community of Interests" normally has a much wider and more encompassing meaning when bargaining actually takes place than it does when organization is being attempted.*

In many aspects of collective bargaining: pensions, vacations, holidays, welfare payments, effects of cost-of-living changes on salaries, uniformity of treatment of all employees is no doubt generally appropriate. These actually encompass most of what are referred to as "terms and conditions of employment." However, this is not to say that units made up of fewer than all State employees, even within the restrictions set forth in the statute, are inappropriate. There may well be valid reasons for the separation or severance of groups of employees in addition to those which are

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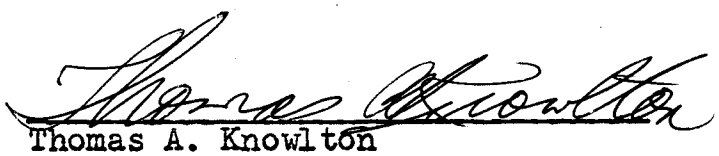
*Much of the testimony and many of the arguments which were advanced at the hearings relate to the conclusions which are set forth in this paragraph. Because of the fact that, so far as I am aware, none of the participants at the hearings are now in favor of such smaller units as were originally described in the initial individual petitions, I have not considered it necessary or desirable in this report to set forth in detail the reasons for my belief that the units, as described by the State, are indeed more appropriate than the smaller units which were requested by the Petitioners originally. Basically, however, I believe that "Community of Interest" which is expressed and recognized at the bargaining table by the bargainers is of greater significance than is the "Community of Interest" of collective bargaining aspirants. The latter concept, based as it normally is on a transitory situation, is frequently a rather ephemeral matter.

separated by the statute. The economic relationships between the various skills are always in a state of flux and the "community of interest" which exists within the skilled group may be of substantial importance. It is for these reasons, that the single overall unit, which I believe has been deemed by the Association to be appropriate, is not recommended here.

Respectfully submitted,



Thomas A. Knowlton

December 15, 1970

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	
STATE OF NEW JERSEY, TRENTON STATE HOSPITAL, Public Employer	Docket No. R-127
-and-	REPORT
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, Petitioner	and
and	RECOMMENDATIONS
COUNCIL #1, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, Intervenor	of
	HEARING OFFICER

APPEARANCES:

For the Public Employer:

Carpenter, Bennett & Morrissey, Attorneys
By: Edward F. Ryan, Esq.

For the Petitioner:

Mandel, Wysoker, Sherman, Glassner, Weingartner and Feingold, Attorneys
By: Jack Wysoker, Esq.

For the Intervenor:

Rothbard, Harris & Oxfeld, Attorneys
By: Abraham L. Friedman, Esq.

Pursuant to a notice of the Public Employment Relations Commission a hearing was held on October 22, 1969, on the petition of Communications Workers of America dated August 7, 1969, which seeks certification as the representative of a majority of employees in specified occupations at Trenton State Hospital. Council #1 was granted the status of Intervenor by the Commission. Other hearings were held on January 6, January 19 and July 8, 1970. Both parties were given full opportunity to introduce testimony and evidence, to examine witnesses and to cross-examine them. In addition large segments of the record in R-93 et al were submitted in evidence to obviate duplicate testimony by witnesses in similar proceedings. Following the hearings, each of the parties submitted a brief.

Trenton State Hospital is a large hospital complex within the State's Department of Institutions and Agencies. Among those in the unit sought by Petitioner of some 1100 non-professional, non-clerical employees are practical nurses, maintenance employees, building security employees, dietary employees and craft employees. Excluded are supervisory, clerical, professional and guard employees.

According to the Employer, the unit sought is inappropriate. It was urged that all State employees, excluding college and university professionals, should appropriately be divided into

nine state-wide units: Crafts, two in Law Enforcement; Professional; Supervisory; Administrative Services; Health Care and Rehabilitation Services; Operation, Maintenance and Services; Inspection and Security. Each would consist of a bundle of related classifications cutting across departmental and institutional lines, so that employees in the same classifications throughout State service would be in the same unit.

The specific unit proposed by the Employer in place of that which is sought is Health Care and Rehabilitation Services, comprising in May, 1969, almost 5000 employees, all but a few dozen of whom were in the Department of Institutions and Agencies. The 31 titles in this group include Institutional Attendant, Health Aide, Day Care Aide, Practical Nurse, and Recreation Aide. The Institutional Attendant title embraces more than two-thirds of the total population of this proposed unit.

Originally Intervenor joined Petitioner in urging the same unit of Trenton State Hospital employees. It maintained that position throughout the hearings and in its post-hearing brief. However, by letter dated November 17, 1970, Petitioner advised the Hearing Officer that it was seeking recognition as the representative of a majority of the employees in the "so-called" Health Care and Rehabilitation Services unit. In fact, such a request had been made on September 23 and thereafter the State

filed a petition asserting that a question of representation exists, copy of which was submitted to the undersigned by the State on November 17.

Petitioner by letter dated November 20 objected to the Hearing Officer's consideration of any of such records on the ground "that the hearing has already been closed, and these additional documents are certainly improper and clearly inadmissable." It is true that the submissions of Petitioner and the Employer were received not only long after the close of the hearings and the receipt of briefs but in the last stages of a review of the record and the argument. However, no grounds exist upon which to foreclose consideration of a change in a party's position which is plainly relevant to a disposition of the issue. This is not an adversary proceeding but an investigative one, according to 19:11-17 of the Commission's Rules and Regulations. The belated information is therefore held to be properly before the Hearing Officer. Petitioner has, of course, the right to file both substantive and procedural objections on the subject, pursuant to 19:14-15 of the Rules.

Plainly the change in position of Intervenor must color any appraisal of the merits. Instead of two labor organizations allied in common opposition to the Employer's unit position, with no indication that anyone but the Employer was interested

in such a unit, there is now an assertion by one organization that it represents the majority of employees in it and demands recognition.

This becomes highly significant. Naturally a consideration in a case of this kind is whether or not employees are desirous of organizing into a Health Care unit. The Employer has a legitimate interest in the nature of the unit with which it must contend, but units are created in the first instance in order to afford employees the rights of self-organization and collective bargaining. They should not be created at an Employer's behest in a way that might frustrate organization and collective bargaining. Thus a unit sought by employees should not be lightly dismissed as less preferable than one sought only by an employer.

In its brief Petitioner pointed to "the fact that these particular employees at Trenton State Hospital desire to be represented by their own union." Petitioner then added that "we note that there is no evidence that any public employees desire State-wide units of the type proposed by the State." This argument is now removed from the scene in view of the fact that Intervenor seeks representation rights for the very unit which the State contended was appropriate and which embraces the overwhelming majority of the employees in Petitioner's proposed unit.

The stated criterion in Chapter 303 is the following:

> ...The negotiating unit shall be defined with due regard for the community of interest among the employees concerned... (C. 34:13A-5.3)

The question of the appropriate units in large government structures is not easily resolved. Aside from those proposed in this case, there are, of course, other alternatives. One is separate units for each title, which is similar to the system described for New York City. It guarantees that all employees doing the same work will receive the same salary range; the community of interest of all employees performing similar work, traditionally for the same pay, is apparent. Another is New York State's to which the Employer's is analogous. A third is the Federal Government's unit forms which consist of a vast array of different units in different departments, agencies, and institutions, although they are limited solely to local personnel practices and do not negotiate broad economic issues like wages. The latter is typical of a Trenton State Hospital unit, shaped out of the State's organizational structure, which recognizes the community of interest of employees in a given institution with a common purpose.

Essentially the Employer is urging a form of classification unit, except that groups of related titles are brought together,

both because there is a community of interest of all professionals, all craftsmen, all supervisors, etc., despite their loose ties in some cases, and also because of the administrative difficulty and whipsawing possibilities inherent in hundreds of separate units created by titles. The community of interest of those in a title, working anywhere in the State, is self-evident.

Employees do have more than a single community of interest, and they overlap. There is a community of interest among all the employees in a single institution, in similar institutions operated by the State, in a department, in a title, in an occupational grouping, and the like. One of the measures in determining an appropriate bargaining unit is the history of a bargaining relationship, which helps identify the community of interest. According to Petitioner there has been such a relationship in the unit which it seeks. Employees at Trention State Hospital, it was testified, had been in various organizations for seven years or so and grievances have been pursued through them with Hospital authorities.

The State's grievance procedures enabled Hospital employees to take up grievances individually or to be represented by others in doing so. There has been no provision for formal recognition and the organizations at Trenton State Hospital over the years had only a handful of employees among their members. It was

testified that until 1968 there were up to 200 members but not all 200 held membership at the same time. The fragmentary nature of the efforts to utilize the grievance machinery by means of a representative organization is manifest from the testimony. It is indicative only of the success of a small number of employees in working together, but it does not denote any broad and successful effort to organize the employees in this Hospital for any common purpose at all prior to Chapter 303.

Petitioner also cited the differences in labor markets in the State of New Jersey in support of its view that the employees in this institution should be enabled to organize and negotiate separately. It cited the geographical separation of employees in the Employer's proposed unit. But Petitioner places emphasis upon "the problems and grievances" rather than upon the resolution of economic demands. For it can hardly contend that economic issues are genuinely susceptible of resolution by employees in just one among a number of similar facilities and who constitute only a minority in the various classifications covered by the petition.

The Employer maintains that co-equal with the consideration of community of interest among employees is the public interest. In that connection, it cites the policy declaration in Chapter 303 (C. 34:13A-2), which states in part, as follows:

> It is hereby declared as the public policy of this State that the best interest of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors ...that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected...

According to the Employer, it would not be in the public interest to fragmentize bargaining units so that the State is required to deal with a wide assortment of units of all sizes, shapes and descriptions. It would lead to a state of competition among various unions each seeking to outdo the other and, the Employer asserts, effective bargaining could not take place at the level of the unit proposed here. Evidence was introduced which showed that aside from localized personnel practices all policies affecting employees in the Hospital originate either at the Department level or, in most cases where economic matters are concerned, at the level of the State itself.

In view of the problems of fragmentation, the Employer contends that State-wide units rather than "many small competitive units" are most suited to effective collective bargaining. Consequently, the unit proposed by the State, Health Care and Rehabilitation Services, would embrace the Trenton State Hospital employees in large measure. It is described as follows:

> Composed of employees who are engaged in para-medical activities and employees who participate in the support functions such as recreational, vocational, and social programs designed to aid in the care, health and rehabilitation of the physically, mentally ill or handicapped.

Units of the State's employees should be based upon the employees' community of interest in the first instance, since this is the only specific criterion specified in Chapter 303. The admonition in the "Policy Declaration" concerning the public interest enters the picture as relevant background in weighing competing communities of interest, but it cannot supersede that criterion. After all, the purpose of Chapter 303 is to encourage employees' organization and representation presumably through means and methods that they desire, not to frustrate it. Thus, unless there were a showing that one particular unit form is clearly violative of the public interest as compared with another, the latter criterion should not be controlling. Unlike the Taylor Law, under which the criteria both of employee community of interest and public interest are stated as co-equals, there is no such formulation in Chapter 303.

Employees, not the Employer, consequently should have the ultimate voice in determining the kinds of unit they want, provided they are neither inappropriate nor clearly damaging to the public interest. Chapter 303 does not foresee selection

of the abstractly most perfect unit, which no employee wants, but the selection of an appropriate unit. There are drawbacks in any form of unit, both that proposed by the Employer and that proposed by Petitioner, but one encompasses the community of interest of employees in their establishment and the other in their common classifications. In view of Intervenor's recent efforts to obtain bargaining rights in the Health Care unit suggested by the State, it is apparent that the employees are divided, and there is no reason why the unit which can produce the more effective bargaining relationship should not be found appropriate if it does not jeopardize the public interest.

Petitioner's proposed unit form, if extended throughout the State, would create a multiplicity of units in institutions, offices and agencies, based largely on narrow functional groupings and cutting across classification lines. It would create administrative difficulties for the Employer as well as severe limitations on the areas where effective negotiations are possible. Wages cannot actually be negotiated in such units, unless helter-skelter rates and economic terms are to be established for employees in the same classifications throughout the State, a difficult prospect for any employer, let alone a State Government.

There are drawbacks in the Employer's proposal as well. Such economic benefits as vacations, holidays and sick leave

can hardly vary among different classifications within Trenton State Hospital, yet there could be differences if they are separately and freely negotiated by the State-proposed units. However, coordinated bargaining foreseen by Petitioner as a future possibility could be more readily implemented in this area by the Employer's proposal for a handful of large units than by Petitioner's proposal, which would require coordinated bargaining even on the salaries of classifications slicing through unit lines.

Petitioner stresses in its brief that the New York City experience with fragmented bargaining, which was described as unhappy by the General Counsel of the Office of Labor Relations, "did not involve units predicated on an institution-by-institution basis, as petitioner requests herein." However, New York City did have such unit forms, under the Mayor's Executive Order No. 49 in 1958, according to Mr. Ruffo's testimony in Case R-93 et al (Page 286). Certificates of Exclusive Recognition were issued for "limited forms of bargaining" to Unions representing employees in departments, which could not bargain on money matters. No union had majority status in particular titles at that time, he said, but after 1960 any union with a majority in a title could negotiate rates of pay and some other economic issues. On Page 309 of the Transcript Mr. Ruffo testified that only

recently the Office of Collective Bargaining decided that it would issue no more departmental certifications.

Thus the City has had experience with the kind of vertical units proposed by Petitioner. It no longer contemplates their continuation and effective bargaining is carried on by horizontal classification units.

With all its described shortcomings, New York City has accomplished by ordinance the reasonable goal of a uniform approach to fringe benefits of general applicability. Its narrow classification bargaining on wages, a few other localized economic benefits and grievance procedures may have resulted in the destruction of a city-wide compensation plan which relate the rates of one classification to another in a rational manner. But, for example, it has avoided separate bargaining on vacations, holidays and the like. This has been done through the legal requirement that only an organization or group of organizations representing more than 50% of the employees may bargain on those fringes which necessarily have universal applicability. Similar approaches may develop in New Jersey to produce genuinely effective negotiations of all issues. But in all respects the State's proposal is more conducive to present effective negotiations than is Petitioner's, and avoids New York's fragmentation into individual classifications.

Petitioner cites the decision in the State College case (PERC-1) where the Commission decided that each college constituted a separate unit. Significantly, in that case the Public Employer joined with one of the employee organizations in urging such a finding. The Employer was not represented by the State, but by the Board of Higher Education.

The Commission found:

> ...Although the Board of Higher Education establishes policies regarding curriculum and salaries which affect the colleges, "The government, control, conduct, management and administration of each college" is vested in the respective boards of trustees of each college pursuant to 18A:64-2, New Jersey Statutes. The individual colleges are charged also with the determination of curriculum, programs, organization, administration, appointments of staff and determinations regarding compensation and tenure of staff under guidelines established by the Board of Higher Education pursuant to the aforementioned Statute. (Underlining added.)

It appears that considerably greater control and discretion in major areas rest with the individual colleges than with an institution like Trenton State Hospital. The Commission found that the guidelines of the Board of Higher Education do "not materially detract from the local autonomy of each college... each college affects the tenure of its staff and each governs their working conditions." Indeed the Hearing Officer, Benjamin Wolf, found, as follows:

> The intent and design of the law establishing them has been to make each as autonomous as possible. The Education Law provides "that it is in the best interests of the state that state colleges ...be given a high degree of self-government."

This is a substantially different role from the Hospital's vis-a-vis both its Department and the State.

Neither the unit sought by Petitioner nor that sought by the State resolves all of the known complications, let alone many which are as yet unforeseen. The need for more creative approaches than have been proposed by the parties perhaps will devolve upon the Legislature or upon PERC. But for the present the Employer's proposal is more feasible.

Thus on the evidence in this case, the Health Care and Rehabilitation Services unit proposed by the Employer must be held to be the more appropriate. This finding is based upon the undeniable advantages for effective bargaining in a large unit including all in related classifications, rather than one limited to a single institution containing a cross-section of many classifications. The State's proposal for 11 separate units is designed to afford related areas, all having undeniable communities of interest, the opportunity to bargaining collectively over significant issues, not equally possible under Petitioner's proposal, which would actually permit effective negotiations only over such matters as local practices.

Each side in this case saw its proposal as a preferable way station on the road to the opposite form of unit if it should prove desirable in coming years. Petitioner states, as follows:

> ...it is much easier at this stage of development for smaller units to grow into larger units, if and when the employees and union involved find that there is reason and need for such development. However, once the larger, State-wide unit is created, it is much more difficult, if not impossible, to break down into smaller units, even when the State-wide unit is too large, awkward, unwieldly and prevents employee participation in the activities and functioning of his own representative organization.

On the other hand the Employer makes a completely contrary assessment:

> ...The lines we have drawn are not immutable. As the roles of the State and its employee organizations develop, as patterns of bargaining emerge, and as the law develops and changes, existing conflicts reconciled or eliminated, legislative participation clarified, different uniting may become appropriate.
>
> We believe it preferable, however, in order to prepare for these developments, to start with the large units. It is far easier to sever a unit from state-wide units, than to bring a unit, prematurely removed, back to it. We urge PERC to go slowly and weigh with great care the effects of changes in the unit as determined by the State.

There is no basis upon which to uphold either forecast. Consequently the recommendation herein is based upon the finding that at this time the State's proposal meets the requirements of Chapter 303 and is the more appropriate of the two units proposed.

RECOMMENDATION

It is recommended that an election be held to determine whether or not the majority of employees in the Health Care and Rehabilitation Services unit, as proposed by the Employer, desires to be represented for purposes of collective bargaining. It is further recommended that a reasonable opportunity be given to Petitioner to produce a showing of interest in this unit.

Milton Friedman
Hearing Officer

Dated: November 27, 1970

STATE OF NEW JERSEY

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF GREYSTONE PARK STATE HOSPITAL, PUBLIC EMPLOYER, and LOCAL 821, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, PETITIONER.	DOCKET NO. R-91 REPORT and RECOMMENDATION OF HEARING OFFICER

REPORT AND RECOMMENDATION OF HEARING OFFICER

A petition was filed with the Public Employment Relations Commission on June 20, 1969 by Local 821, United Brotherhood of Carpenters and Joiners of America, the Petitioner above named, concerning its claim of representation of craft maintenance employees in the Engineering and Upholstery Departments, but excluding Supervisors and all others, pursuant to Chapter 303, New Jersey Public Laws of 1968.

On August 18, 1969 the undersigned was designated as the Hearing Officer. Pursuant to a Notice of Hearing and four subsequent Orders Rescheduling Hearings, three hearings were held on the following dates: October 3, 1969; October 20, 1969; and November 4, 1969, before the undersigned Hearing Officer. The first two hearings were held in Newark, New Jersey; the third hearing was held in Morris Plains, New Jersey. At the hearings the parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally.

Appearances were as follows:

For the Public Employer: Edward F. Ryan, Esq.

For the Petitioner: Meth and Wood, Esqs.
By Robert C. Neff, Esq.

There were various motions made during the hearings. At the hearing on October 3, 1969 the Petitioner moved (TR. 117) "to compel the State to produce all of its books and records which substantiate the places of employment of all persons which they deem to be in the appropriate state wide unit which would include the employees who have petitioned this tribunal today". This was opposed by the State of New Jersey (hereinafter called "State") on the grounds that the rules call for the use of subpoenas for such purpose, and on the further ground of relevancy. Also at the October 3, 1969 hearing, the State moved (TR. 123) that the petition in the instant case be consolidated with a series of other petitions involving the State at various State institutions or facilities. The Union opposed the State's motion to consolidate, and the Hearing Officer requested briefs from the parties on this subject. The Hearing Officer did not rule on the Petitioner's motion to compel the production of records, but he indicated that the motion was premature.

On October 1, 1969 a Subpoena was issued at Trenton, New Jersey by Louis S. Wallerstein, Executive Director, P.E.R.C., directed to Frank A. Mason, Deputy Director, Employee Relations, State of New Jersey, Office of the Governor, calling for his appearance on October 17, 1969 before the Hearing Officer and that he bring with him and produce certain documents set forth in an

Appendix attached to the Subpoena. The Subpoena was received by Special Counsel for the Governor on October 14, 1969. On October 17, 1969 the State, through Special Counsel, served a Petition to Quash Subpoena upon the Petitioner and the Undersigned.

Meanwhile on October 10, 1969, the Petitioner served a copy of "Notice of Motion to Suppress the State's Defense as to 'Statewide Appropriateness'" and the Petitioner filed therewith a brief (1) in opposition to the State's motion to consolidate, and (2) in support of Petitioner's application to suppress the State's defense as to statewide appropriateness of the unit.

On October 14, 1969, the State filed a Memorandum in Support of Motion to Consolidate, and on October 15, 1969, the Petitioner submitted a Reply Memorandum. At the hearing on October 20, 1969, the hearing officer ruled as follows: 1) he denied the State's Motion to consolidate; 2) he granted the Petitioner's application to suppress the State's defense as to state wide appropriateness; 3) on the motion to quash the subpoena, the parties having agreed as to the disposition of the requested items on the subpoena except for addresses of the employees and the length of service in the two departments, the Hearing Officer denied the Petitioner's request for addresses, but granted the requested for the furnishing of the length of service of the employees involved.

At the hearing on November 4, 1969, the State of New Jersey made an offer of proof to support its contention that the most or only appropriate unit within which the employees involved

in the petition should exercise their right to bargain collectively would be on a state-wide basis either within a craft unit or an operation-maintenance service unit, but in either case, grouped on a state-wide basis with other employees working at other institutions or in other departments of the State within the same general grouping of employees, separating those employees who are supervisory and who would then constitute themselves an appropriate unit of supervising employees on a state-wide basis.

By letter dated December 16, 1969, the State withdrew its offer of proof, and requested that the record be closed. The Petitioner acceded to closing the record on January 14, 1970. The parties were given an opportunity to file briefs and briefs were filed. On June 8, 1970, the Hearing Officer received various exhibits from the Petitioner. Other exhibits were forwarded to the State by the Petitioner so that copies could be forwarded to the Hearing Officer. On August 3, 1970, the Hearing Officer received the balance of the exhibits from the State.

The New Jersey State Hospital at Greystone Park (Morristown) New Jersey, is one of four hospitals comprising a network of coordinated mental hospitals for the care and treatment and rehabilitation of psychiatrically disturbed patients in the State of New Jersey. Greystone Park State Hospital covers the geographical area of northern New Jersey including Passaic, Bergen, Morris, Sussex and most of Essex County. Psychiatric patients in the State of New Jersey who are also afflicted with tuberculosis are treated at Greystone Park as well. The Hospital operates

within the Division of Mental Health and Hospitals in the Department of Institutions and Agencies.

The management, direction and control of the Hospital is vested in its Board of Managers which is in turn responsible to a State Board of Control for the efficient and scientific operation of the institution. General responsibility for overseeing all Hospital operations rests with the medical director-superintendent. Administration of the Hospital is divided into the medical patient-care division and the business department. All employees who deal directly with the care, treatment and rehabilitation of patients come within the medical patient-care division, and all employees who provide for the upkeep and service, including dietary needs come within the business department.

All employees of the Hospital are employees of the State of New Jersey. The table of organization of the Hospital is set forth on State Exhibits 3A and B. These indicate that the Hospital employs 586 non-professional and 1522 professional employees in the current fiscal year.

The Unit sought by the Petitioner involves 95 employees coming under the Engineering Department, and 7 employees in the Upholstery Unit. The employees in the unit sought by the Petitioner total 102 employees include carpenters, plumbers, sheet metal workers, locksmiths, electricians, masons, painters, upholsterers, shoemaker, stationary firemen, operating engineers, foremen, and repairmen and helpers working with these trades (Exhibit P. 1). The wages, hours, and fringe benefits inclusive

of holidays, sick leave, leave time, etc. are identical for these employees with other State employees in the same job classifications at different locations throughout the State. Job classifications and reclassifications are controlled and administered through the Civil Service Commission and the State Budget Director's office. The employees involved in the petition are all classified by the Civil Service Commission.

Seven of the shop units (carpentry, plumbing, sheet metal, machine, electrical, masonry and upholstery) occupy the engineering building in which the engineering Chief Engineer, Mr. Chaillet, has his office. These shops are interconnected by open doorways. The remaining employees are housed in separate buildings, and cover painters, engineering boiler room and sewage. The upholstery department is a non-engineering unit contained in the engineering building and is located in a shop which connects directly with the plumbing unit. One Union witness testified that the tasks performed by the upholstery unit exceed the ordinary skills possessed by other employees or craftsmen at the hospital, including the operation of sewing machines, the measurement of materials, the engaging in leathercraft, and floor installation of materials including tile and linoleum.

There is no common supervision at the immediate level between the upholstery department and the engineering department. Direct supervision of the upholstery department is by the Assistant Business Manager through an upholstery foreman, whereas the engineering department is supervised through an engineer in charge.

The only relationship between the engineering and upholstery departments is their primary location in the same building.

The petitioner herein alleges:

The 102 employees of the engineering and upholstery departments at the New Jersey Hospital at Greystone Park constitute an appropriate bargaining unit under the New Jersey Employer-Employee Relations Act. The Public Employment Relations Commission has rendered a number of decisions which have resulted in the following principles to aid in unit determination cases. These include:

1. The Act does not contemplate that there shall be only one appropriate unit for any given group of employees. (See In the Matter of Garfield Board of Education, P.E.R.C. 16);

2. In the event that more than one unit might meet the positive (community of interest) and negative (exclusion of supervisors, etc.) criteria of the Act (34:13A-5.3 and 34:13A-6), then the unit which implements the free choice of the employees should be found to be the appropriate unit. (Garfield, supra.);

3. The circumstances of each particular case will determine what is "appropriate." These factors include educational requirements, training, skill, physical proximity, relationships as to wages, hours, and supervisors, identifiability of the unit, and common supervision. (See Bergen Pines County Hospital, P.E.R.C. 19).

A. The Community of Interest

Under the table of organization of the hospital, 95 of the 102 employees have common supervision, the work orders issuing from a common supervisor (Mr. Chaillet) with all matters of hiring, discipline, job supervision, overtime, vacation and sick leave funneling through the head engineer and assistant engineers. The department is physically combined with the upholstery department because of the related nature of the work of the two departments. The majority of the shops are interconnected, and although the maintenance and utility work performed by some of the men covers the entire hospital complex, their functions are largely centralized in the engineering building - as to checking in and out, receiving assignments, and performing layout and fabrication work. The engineering and upholstery department employees have enjoyed a high degree of stability in employment, they socialize together (TR 53); there is virtually no transfer of these employees to other agencies or institutions, and there have been less than a handful of instances where employees from other hospital departments have transferred into the departments in the petitioning unit. All the proposed unit employees have the same work schedule, whereas other hospital employees are subject to five or six different work schedules (TR 425). The standards, skills and work

capabilities of the men are set forth in P-20, and a reading of these indicates quite clearly that all of these employees perform in the common areas of craft maintenance and utility operation at the hospital. Employees in grounds and motor vehicle maintenance, the only vaguely related employment at the hospital, are not, in any way related to operational control or community of interest of the engineering and upholstery departments.

B. The Bargaining History

Petitioner

The testimony of Mr. Turner, business agent of Local 821, Mr. Longcore, a journeyman plumber in the engineering department and Mr. Winans, personnel director indicates that these men have been represented by Local 821 and that the employer has recognized Local 821 for purposes of negotiating terms and conditions of employment. Among those matters in which representation and recognition was clear, were the following:

1. Changes in employment classification (affecting wages) for certain employees (TR 198, 209).

2. Removal of prison labor from the painting jobs normally performed by the unit (TR 200, 300, 301).

3. Establishment and recognition of a grievance committee and safety committee (TR 171, 240).

4. Establishment of standard overtime procedures, rotation of overtime and the posting of overtime lists (TR 209).

5. Procurement of check-off authorization (TR 172, Exhibit P-6).

6. Use of bulletin boards (TR 181).

Discussions and correspondence as to these matters and others were held by representatives of Local 821 with the hospital staff and with representatives of the State of New Jersey continually for over one and one-half years, a portion of which predated the effective date of the Act (testimony of Mr. Turner and Mr. Moss). On June 3, 1968, the Acting Commissioner of the Department of Institutions and Agencies, by letter (Exhibit P-3) recognized Local 821 as the representative of employees in the engineering and upholstery departments.

C. The Foremen

Petitioner

As to the eight foremen in question, none are supervisors within the meaning of the Act. Supervision, in the sense that possession of it by one employee would, as a matter of policy, create a conflict between such employee and any other employee for

bargaining purposes is not vested in any of the 102 employees in the unit. Supervision, in the sense of the Act, is vested in the engineers in charge of the engineering department or at some higher level. In the case of the upholstery department, it is vested in the assistant business manager (Testimony of Mr. Winans and Exhibit S-3B). The State produced no testimony to the effect that any foreman had the attributes of a "supervisor". In fact, the State's witness, Mr. Winans, testified quite to the contrary, and that although he approves or disapproves all personnel actions, including hiring, firing and discipline, he could not recall any specific instances where the foremen recommended disciplinary action (TR 340). In fact, Mr. Winans testified at TR 365 that not even he, as personnel director, several steps above a foreman in the handling of a personnel action, had the authority to "either establish or modify wages, hours or terms of conditions of employment at Greystone". The foreman's sole function is to add his comments in favor of or against proposed actions, but that any authority to effectively take or recommend the action is substantially removed by several steps from the foreman himself. There is considerable overlap between the pay rates and job descriptions as between the non-foremen journeymen and the foremen.

More significant is the working role played by foremen. Mr. Longcore testified at TR 61-63 that foremen pick up tools and work on jobs frequently. Although Mr. Longcore indicated that foremen worked directly on jobs as a result of being shorthanded, Mr. Winans testified that all of the units are shorthanded and have been for some time (TR 419) and Exhibit S-3B indicates that the hospital considers that there are shortages in every unit in the engineering and upholstery departments. Thus the foremen are working side by side with other employees as a matter of routine.

D. The Distinction of Craft and Non-Craft Employees

Petitioner

The Act does not preclude the inclusion of craft and non-craft employees within the same unit. It simply states that there shall be no inclusion without the consent of the craft employees, thereby requiring a separate vote on that issue. The Petitioner has no objection to such a ruling. As a practical matter, the vast majority of the employees, by training, licensing, apprenticeship or otherwise, all as required by the specific "classifications" (Exhibit P-20) published by the Civil Service Commission, fall into the traditional concept of craftsman. Here again the word craft is not defined. In the Matter of Camden County Board of Chosen Freeholders, P.E.R.C. 30, the Commission ruled that the following classifications are "crafts".

"Barbers, beauticians, carpenters, carpenter's helpers, plumbers, plumber's helpers, plumber-steamfitters, plumber-steamfitter's helpers, senior plumber-steamfitters, painters, painter's helpers, electricians, electrician's helpers, masons, mason's

helpers, mechanical repairmen, mechanic's helpers, cabinet maker-refinishers, general maintenance repairmen, stationary firemen and stationary engineers."

These classifications cover either directly or by analogy every employee within the engineering and upholstery departments at Greystone.

The State herein alleges:

A. The Unit Proposed By The Petitioner Is Not Appropriate Under Chapter 303 of The Laws of 1968, And The Petition Should Therefore Be Dismissed.

1) For any group of employers to constitute an appropriate collective bargaining unit, such group must be at least a readily identifiable and homogeneous group apart from other employees. The petitioner seeks an arbitrary, artificial, piece-meal, anomalous group of employees not appropriate for collective negotiation purposes. In Texas Instruments, Inc., 145 NLRB 274 (1963), the Board dismissed a petition for a proposed unit of maintenance crafts employees which include many of the classifications herein proposed by the Union. In dismissing this petition, the Board said:

> "Wages, hours, working conditions and benefits for all employees, in the employer's facility, are established and administered uniformly. Standards for recruitment and selection of personnel, job evaluations and other aspects of the employment relationship are also centrally established. Management control is centralized."

The appropriateness of a negotiating unit must be determined on the basis of the community of interest of the employees involved. Community of interest includes such considerations as geographical proximity, similarty of working conditions, common supervision, centralized management, labor relation policies and relationship to other employees. A segmented group of employees must, in order to be appropriate, possess that degree of functional distinctiveness and autonomy warranting a finding that they have a community of interest significantly separate and apart from other employees.

2) Petitioners unit of upholstery department and engineering department of employees does not meet certain minimal indicia of community of interest. There is no common supervision at the immediate level. Direct supervision of the upholstery department is by the Assistant Business Manager through an upholstery foreman, whereas the engineering department is supervised through an engineer in charge. (See exhibit S-3B: TR. p. 45). Moreover, the proofs establish periodically the employees within the petitioner's unit are supervised by supervisors in other departments, when they are performing work within those departments (TR. p. 72). The only relationship between the engineering and upholstery departments is their primary location in the same building. There is no exchange or interchange of employees between the upholstery and engineering departments (TR. p. 47). In contrast, the proofs show that there is interchange between the nursing department, the extermination department and the engineering department. A repairman from the extermination department was transferred into the plumbing group in the engineering department (TR. p. 424). Two psychiatric technicians from the nursing department were transferred into the painting group in the engineering department (TR. p. 425).

3) Geographical considerations do not support petitioner's unit as an appropriate unit. The employees within the petitioner's unit are primarily assigned to not only the engineering building, but also in the power house, sewerage treatment plant and the generating plant all of which are located at different locations anywhere from 150 feet to 1 mile distance from the engineering department (See Exhibit S-4: TR. p. 69-70, 332). Furthermore, many of these employees perfrom their tasks throughout the Hospital in connection with the operations in service areas and report to the engineering building only to sign in and eat lunch (TR. p. 50-67). Consequently, their day to day contact with other employees at the Hospital is equal to or greater than the contact with the engineering department employees.

4) The employees in petitioner's unit are paid on the same hourly basis, share the same overtime provisions, hiring procedures, ultimate supervision and participate in the same state-wide insurance and retirement benefits as all other employees of the Hospital and in the State.

5) Furthermore, employees in other departments of the Hospital possess and use skills which are possessed and used by employees in the petitioner's unit. Building maintenance employees perform carpentry and painting work (TR. p. 320). The classification in the petitioner's unit of repairmen, carpenters, masons, exist not only in the engineering department but in other departments of the Hospital, for example food service, refrigeration, greenhouse and ground (TR. 332-346-348).

6) Finally, the petitioner's unit is not supported by the record proofs as appropriate on the basis of a craft unit. Certain classifications which are clearly non-craft are included and as pointed out in the paragraph above certain classifications at the Hospital are excluded which are equivalent in terms of skills and duties.

7) The record is devoid of any proofs from which a conclusion that either an upholsterer or a repairman constitute a craft. On the contrary, the record only warrants a conclusion that these job classifications are non-craft. The proofs show that a repairman is a general title for an employee that has some knowledge of the operation of machinery and certain limited knowledge of several maintenance and trade skills. Such employees are, in fact, handymen and many are employed in the Hospital beyond the limits of the petitioner's unit (TR. p. 100, 331, 332). Moreover, the skills used by the employees within the petitioner's unit are so diverse from simple painting and woodcutting to skilled machine-work and are intimately involved with work of other maintenance and service groups within the Hospital that a claim of separate craft unit is not supported and is inappropriate.

B. The Bargaining History Does Not Support the Petitioner's Contention That This Unit is Appropriate.

1) The petitioner presented much argument and testimony as well as many Exhibits to support its contention that this unit's appropriateness has been recognized by a history of collective bargaining between the petitioner and the Hospital. It is clear though that these presentations are irrelevant to the consideration of an appropriate collective negotiating unit. Prior to the passage of Chapter 303, a public employer had the constitutional obligation to deal with any representative of an employee or group of employees for the purpose of solving grievances. Even today, and since the passage of Chapter 303, Section 7 thereof provides that "when no majority representative has been selected as the bargaining agent for the unit of which an individual employee is a part, he may present his own grievance either personally or through an appropriate representative or an organization of which he is a member and have such grievance adjusted." (Emphasis added).

2) The processing of grievances and the representation of employees for that purpose is irrelevant to the representation of employees on a majority basis in an appropriate unit for true collective negotiations. The very essence of collective negotiations, that is, meaningful discussion and dialogue leading to an agreement concerning the wages, hours, main fringe benefits and primary working conditions of the employees represented has at no time been engaged in between the Hospital and the petitioner. As a matter of fact, it was made clear to the union several times

that neither the Hospital nor the State had any authority to deal with the union on those subjects for its small and fragmented group of members.

3) The Hospital has dealt with petitioner for the purposes of handling and processing grievances of the employees which are members of the union, but it has dealt with other labor organizations in the same context. In order to be considered a de facto representative entitled to have any alleged bargaining history considered for the purposes of assisting in the determination of an appropriate unit, a union must have a history of participating in the establishment of wage rates, hours of employment, major fringe benefits and primary working conditions as well as in the settlement and processing of grievances. Inyo Lumber Co., 92 NLRB 1267 (1951).

C. No Matter What The Unit Determination May Be, Foremen Must Be Excluded Therefrom Since They Are Supervisors Within The Meaning of Chapter 303.

1) The testimony was clear that a foreman gives the work orders to those men under him; it is the foreman who inspects the work of the men under him; it is the foreman to whom an employee will go to request a vacation or leave of absence; it is only in case of emergency or absence of personnel that a foreman will participate in the normal work activities of the men under him. (TR. p. 47, 76-81, 98, 313). The petitioner's own witnesses testified that the foreman not only assigns and evaluates work as documented above but also initiates disciplinary proceedings. (TR. p. 98). This power and right to initiate disciplinary proceedings and effectively recommend such action was reaffirmed by the public employer, who also testified that foremen have, within the limits of the Civil Service Rules and Regulations the authority to hire and fire employees by effectively recommending such action. (TR. p. 322, 324, 337).

The Hearing Officer went to great lengths to set forth the evidence presented and the respective positions of the parties.

Based on all of the evidence submitted, the Hearing Officer does find as follows:

FINDINGS:

1) The Petitioner is an employee representative within the meaning of the Act.

2) The employees in the unit requested by the Petitioner are employees of the State of New Jersey.

3) The unit requested by the Petitioner consists of both craft personnel and non-craft personnel.

4) There are 484 additional non-professional employees, many of which possess and use skills which are possessed and used by employees in the Petitioner's unit. The classifications in the Petitioner's unit of Repairmen, Carpenters, Masons, exist not only in the engineering department but in other departments of the Hospital, for example, food service, refrigeration, greenhouse and grounds (TR. 332 - 346 - 348).

5) The various classifications sought to be covered by the Petitioner's unit basically do not have common supervision. The evidence indicates that periodically the employees within the Petitioner's unit are supervised by supervisors in other departments.

6) The basis of hourly pay, the overtime provisions, hiring procedures, ultimate supervision, participation in the State-wide insurance and retirement benefits, and other fringe

benefits including holidays, sick leave, leave time, etc., are identical for all employees of the Hospital and in the State, as well as for the employees within the Petitioner's unit.

7) The Petitioner's claim of bargaining history does not meet the criteria of the Commission.

8) The Foremen mentioned in this proceeding are true supervisors under the Act.

9) The unit sought by the Petitioner is inappropriate.

RECOMMENDATION:

The Petition herein should either be dismissed, or alternatively, in the light of Justice Feller's decision in Association of N. J. State College Faculty, Inc. vs. Board of Higher Education, et al. Sup. Ct. of N. J., Law Div. Union County Docket No. L 33784 - 69 P.W. (10/7/70) wherein the Court held that the Governor is the Employer of the State employees, and because judicial notice should be taken of the filing of State-wide petitions for State employees, the Petition should be consolidated with the other State petitions.

Joseph F. Wildebush

JOSEPH F. WILDEBUSH, Hearing Officer

December 2, 1970