

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF GLOUCESTER, BOARD OF CHOSEN  
FREEHOLDERS

Public Employer

and

TEAMSTERS LOCAL UNION NO. 676, INTER-  
NATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN and HELPERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the County of Gloucester, a hearing was held on May 27, 1969, before ad hoc Hearing Officer Alexander M. Freund at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence and to argue orally. Thereafter, on July 11, 1969, the ad hoc Hearing Officer issued a Report and Recommendations. Exceptions were filed by the Public Employer and were later supplemented. The Petitioner filed a Brief in support of the Report and Recommendations of the Hearing Officer and an answer to the Supplement to the Public Employer's Exceptions. The Commission has considered the record, the Hearing Officer's Report and Recommendations, the Public Employer's Exceptions, Supplement to the Exceptions, the Petitioner's supporting Brief and Petitioner's answer to the Public Employer's Supplement, and finds:

1. The County of Gloucester is a public employer within the meaning of the Act and is subject to the provisions of the Act.

2. Local 676, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is an employee representative within the meaning of the Act.
3. The public employer having failed to recognize the employee representative as the exclusive representative of certain correction officers, a question concerning the representation of public employees exists and the matter is appropriately before the Commission for determination.
4. The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, is affirmed.
5. Accordingly, the Commission finds the appropriate collective negotiating unit is: "All county correction officers except managerial executives, craft and professional employees, the Warden, Deputy Warden, Sergeants, and all other supervisors, as defined in the Act."<sup>1/</sup>
6. The public employer contends that the correction officers should be considered in the same category as "policeman" as to whom the Act provides "except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership". In support of this contention the employer argues that NJSA 2A:154-3, approved November 4, 1968, grants to correction officers powers conferred on policemen. The employer argues additionally that a private sector strike by the petitioner would prevent the delivery of

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<sup>1/</sup> The unit is modified to conform to the statutory requirements concerning the listed exclusions and the agreement of the parties regarding the supervisory status of certain employees.

necessary supplies to the county prison and, therefore, require the correction officers to deliver supplies to the prison which could create a conflict of interest. It is, therefore, contended that in accordance with the aforementioned provision of Chapter 303, Laws of 1968 that the petitioner, Teamsters Local 676, which represents employees other than policemen, may not represent these correction officers. Similarly, the public employer argues a conflict may exist regarding the imprisonment of members of any employee organization of which these correction officers are a member. It is recognized by the Commission that the correction officers are authorized to exercise police powers pursuant to N.J.S.A. 2A:154-3. However, the record makes clear that these correction officers are not policemen and that their duties involve the security and related duties associated with confinement of prisoners.<sup>2/</sup> The correction officers' duties involve the general supervision of the inmates of the prison, the feeding of the inmates and their transfer between cells at the Gloucester County Prison. The correction officers are not armed. Nor does the record indicate that the correction officers actually are called upon to exercise the police powers conferred by the aforementioned statute. There is no indication that they perform any activities outside of the normal range of duties

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<sup>2/</sup>Lawrence Crispin, attorney for Gloucester County, stated on the record that, "I don't contend that these men are Policemen. I only contend that there is a similarity in the nature of their duties which makes it a sensitive position". Under direct examination by Mr. Crispin as to the nature of the duties of correction officers, Paul Cunard, Personnel Director of the County, said that they have "Basically, security duties, and related duties, in regard to the confinement of prisoners".

enumerated above with the exception of transporting prisoners, which, according to record testimony, is performed "Very seldom". In performing their normal duties, the men in question are correction officers or prison guards and they are not policemen within the meaning of the Act. The Legislature's failure to limit the representation rights of all employees who have the authority to exercise police powers, and its limited proscribing of only the rights of "policemen" in Chapter 303, Laws of 1968 must be read literally. Accordingly, since these correction officers are not "policemen" and do not customarily or normally exercise police functions or authority, the proscription in the Act regarding "policemen" is not applicable to these correction officers. Based upon all of the above, the Commission finds that the correction officers involved herein may decide whether or not they desire to be represented for the purpose of collective negotiation by Local 676, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.<sup>3/</sup>

7. The Commission directs that a secret-ballot election shall be conducted among employees in the unit found appropriate. The election shall be conducted as soon as possible but no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth in Section 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period

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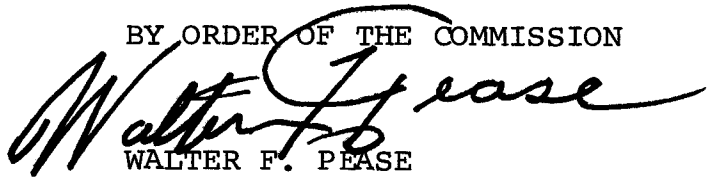
<sup>3/</sup> The public employer's additional contentions regarding a conflict of interest involving correction officers and fellow members of an employee organization who are on strike or are imprisoned is at best speculative and conjectural.

because they were out ill, or on vacation, or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for good cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote whether or not they desire to be represented for the purpose of collective negotiations by Teamsters Local Union No. 676, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

The majority representative shall be determined by a majority of the valid ballots cast.

BY ORDER OF THE COMMISSION



WALTER F. PEASE  
CHAIRMAN

DATED: August 20, 1969  
Trenton, New Jersey

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION

In the Matter of the Representation  
Dispute between

COUNTY OF GLOUCESTER  
BOARD OF CHIEF FREEHOLDERS

and

TRANSITERS LOCAL 676, AFFILIATED WITH  
I.N.T.C.W. and U. of AMERICA

DOCKET NO. N-56

HEARING OFFICER'S

REPORT

and

RECOMMENDATIONS

APPEARANCES:

FOR THE GLOUCESTER COUNTY BOARD OF CHIEF FREEHOLDERS

Lawrence L. Crispin, Esq., Counsel  
Paul F. Gurnard, Esq., Freeholders, Director of Personnel  
Eugene J. McGaffrey, Director, Board of Freeholders

FOR TRANSITERS LOCAL 676

Robert F. O'Brien, Esq., Counsel  
Bernard Kemanah, Organizer  
Anthony Battaglia, Sergeant, Gloucester County Prison  
Joseph Costa, Correction Officer, Gloucester County Prison

Background

Pursuant to a notice of hearing issued by the Public Employment Relations Commission (hereinafter called the COMMISSION), the undersigned Hearing Officer met with representatives of the parties in Camden, New Jersey on June 10, 1969. A transcript was taken of the proceedings, which was received by the undersigned on June 25, 1969.

Teamsters Local 676 (hereinafter referred to as the UNION) seeks certification as the exclusive representative of employees at the Gloucester County Prison. The Prison has a staff of 18 employees: 14 Correction Officers and four supervisors, a Warden, Deputy Warden and two Sergeants. The collective negotiating unit would include only the Correction Officers.

The Gloucester County Board of Chosen Freeholders (hereinafter referred to as the BOARD) opposes the Union's claim on two bases: (1) this unit of employees is not appropriate for collective negotiation; and (2) in any event, the unit should not be represented by an employee organization which admits to membership other employees of the County of Gloucester (hereinafter also referred to as the COUNTY).

It is agreed that the Board is a public employer within the meaning of Section 3(e) of the New Jersey Employer-Employee Relations Act (hereinafter called the ACT). There is also no question that the Union is an employee representative within the meaning of Section 3(e) of the Act. Now, in the event it becomes necessary to determine the majority bargaining representative, does it appear that there would be a problem as to the method to be used for making such a determination.

#### Discussion and Findings

The Board challenges the appropriateness of the unit on the grounds that (1) it is very small and (2) has almost exclusively temporary employees. With respect to the latter objection, the Board argues that under the Civil Service laws and regulations of the State temporary employees are subject

to discharge without cause; and that, therefore, one of the most important terms of employment is removed from collective negotiation; that, furthermore, the members of the unit would be subject to replacement when qualified men are obtained. Admittedly, however, it has been difficult to obtain men who meet Civil Service age and training requirements; and the fact is that most of the Correction Officers have been employed for one to two years and two or three of them for three years (Board witness Gurnard). Thus, for all practical purposes the temporary Correction Officers can look forward to continued employment, if they so desire. Therefore, collective negotiation concerning working conditions has significance for them even though the negotiations may not include every term of employment such as the matter of discharge.

Most important, Section 3(d) of the Act, as the Union points out, defines the term "public employee" in part to "include any person holding a position, by appointment or contract, or employment in the service of a public employer" with certain specific exceptions which are not relevant here. Clearly, then, temporary Correction Officers are "public employees" within the meaning of the Act and therefore entitled to such rights as are granted public employees under the Act, among which is to select a representative for purposes of collective negotiation. Hence, the fact that 12 of the 14 Correction Officers are temporary appointees does not render the unit inappropriate.

As to its objection that the proposed unit of employees is too small, the Board states that it is to the benefit of employee organizations



as well as the Board to avoid a situation in which the Board will have to negotiate with many different representatives for a large number of small negotiating units. In this connection the Board points out that the designated unit of 14 employees is part of an overall County system of 32 departments with approximately 400 employees in over 100 classifications. In further support of its position the Board stresses that the Correction Officers have the same fringe benefits as other County employees: sick leave, vacations, Blue Cross and Shield, insurance, retirement program, etc.

The latter contention is based essentially on the community of interest criterion for determining the appropriateness of a negotiating unit, as set forth in Section 5.3 of the Act: "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned...." The Union stresses a factor which narrows the community of interest. It distinguishes these men from other County employees on the basis of their work as Correction Officers at the only prison in Gloucester County and the consequent difference in problems concerning working conditions.

There is no collective bargaining history in this County to provide guidelines for the evaluation of these opposing positions on community of interest in defining an appropriate negotiating unit. A Civil Service employee organization presents grievances and appears before the Board in budget proceedings. But none of the County employees have been, or are currently, organized and represented by employee organizations for the purpose of collective negotiation concerning terms and conditions of employment.

The Board raises a valid consideration in seeking to avoid a precedent for proliferation of negotiating units within the County. And it is true that the 14 Correction Officers of the Gloucester County Prison constitute a very small unit in view of a total County employment of over 400. On the other hand, they surely have a community of interest in the security-type function they perform and in the nature of their work place. Furthermore, no employee organization challenges the appropriateness of the unit. Thus in contending that the appropriate unit should be a broader grouping of County employees, the exact nature of which is unspecified, the Board does not present a realistic alternative. For apparently there is no employee organization which claims to speak as a majority representative for any broader unit than is here designated by the Union. Therefore, as the Union argues, to find under these circumstances that the proposed unit is not appropriate is to delay, if not frustrate, the exercise by the employees involved here of their right under the Act to choose a majority representative for the purpose of collective negotiation concerning their terms and conditions of employment.

Finally, a ruling by the Commission that these employees constitute an appropriate unit does not preclude, of course, the establishment of broader based negotiating units in the County should the community of interest criterion so indicate. Accordingly, the undersigned recommends that the Correction Officers of the Gloucester County Prison, excluding supervisors, be considered an appropriate negotiating unit.

Should the Commission so rule, the Board objects to the representation of this unit of employees by a labor organization which could at a later

date admit to membership other County employees. It argues that Correction Officers have duties similar to those of policemen in that they perform largely a security function and, therefore, like policemen, occupy a sensitive position; that some of the employees they may be called upon to keep secure in prison could be County employees who are members of this Union; that, therefore, to preclude such situations these employees should either organize themselves as an independent labor organization or, as is the requirement for policemen under the Act, be represented by an employee organization which admits membership only those who perform police or security work.

The Board has reference here to Section 5.3 of the Act, which provides in part that: "...except where established practice, prior agreement, or special circumstances dictate the contrary, no policemen shall have the right to join an employee organization that admits employees other than policemen to membership."

A job specification for the Correction Officer classification was not submitted in evidence. However, the Board's and Union's testimony describes generally the duties of the job. The Correction Officers perform all their duties within the prison except for occasional assignments to transport prisoners. They feed the prisoners; see that the prison is kept clean and in order; supervise various activities of the prisoners; and perform other duties related to the confinement of prisoners. In the performance of their work they do not carry guns. Thus, although the function of

the Correction Officer may be related more to that of the policeman than to that performed by most other County employees, there is no similarity in the duties performed in any significant sense. (See, for example, page 48 of Transcript.) Therefore, the restriction imposed by the Act on the kind of employee organization which policemen may choose to represent them cannot be applied by analogy to Correction Officers.

It is true, of course, as the Board also argues, that Correction Officers, like policemen, have potentially a conflict of interest when called upon to carry out their function with respect to a County employee who is also a fellow member of a labor organization. But this can be said to be true for most any classification of public employee to a varying degree and importance, depending upon the function performed and the level of responsibility. The State Legislature appears to have taken this potential conflict of interest into account in legislating a restriction on the kind of labor organization a policeman may join. It seems that any other such restrictions arising from a potential conflict of interest should also be a matter for decision by the Legislature. Accordingly, on the above grounds the undersigned cannot conclude that the Act prohibits representation of the Correction Officers by the kind of employee organization involved here.

**RECOMMENDATIONS**

The undersigned hereby recommends to the Commission as follows:

1. The Correction Officers of the Gloucester County Prison, excluding supervisory employees, should be designated an appropriate negotiating unit.
2. The unit may be represented by an employee organization which admits to membership other employees of the County of Gloucester.

*Alexander M. Freund*

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Alexander M. Freund  
Hearing Officer

July 11, 1969