E.D. No. 23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK

Public Employer

and

Docket No. R-90

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, LOCAL 42

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the City of Teaneck, a hearing was held on August 19, 1969 and September 4, 1969 before ad hoc Hearing Officer Jonas Aarons at which all parties were given the opportunity to present evidence, examine and cross examine witnesses and to argue orally. Thereafter, on October 12, 1969 the Hearing Officer issued his Report and Recommendations. 1/ Exceptions were filed by the Public Employer. The Commission concluded that the record was insufficient for a determination of all issues and ordered the case remanded for further hearings.

Pursuant to the Order of Remand a further hearing was held on March 10, 1970 and March 24, 1970 before Hearing Officer Jonas Aarons. Thereafter, on May 20, 1970, the Hearing Officer issued his "Report and Recommendations on Order of Remand". 2/ Exceptions were filed by Petitioner. The Undersigned has considered the entire record, the Hearing Officer's Reports and Recommendations, the Exceptions and on the facts in this case finds:

1/ Attached hereto and made a part hereof.
2/ Attached hereto and made a part hereof.

1. The Township of Teaneck is a public employer within the meaning of the Act and is subject to its provisions.

2. The Firemen's Mutual Benevolent Association, Local 42 is an employee organization within the meaning of the Act.

3. The public employer refuses to recognize petitioner as the exclusive negotiating representative for certain of its employees; accordingly a question concerning the representation of public employees exists and the matter is properly before the Commission for determination.

4. Petitioner seeks to represent a unit of all firemen, excluding only the Chief. That unit would include the following titles; four Deputy Chiefs, seven Captains, eight Lieutenants and 58 firemen. The Hearing Officer found that the proper unit for collective negotiations should include the following titles; firemen, lieutenants captains, Fire Signal Repairman and Fire Alarm Operator. Excluded from that unit is the Chief and the Deputy Chiefs. The Hearing Officer came to that unit determination based uppn his conclusion that the officers, i.e. the lieutenants and captains, were not supervisors within the meaning of the Act, and further, should be within the unit regardless of supervisory capacity because of "established practice", namely, a long history of collective negotiations between the Township and the F.M.B.A. for all Fire Department employees. The Chief and Deputy Chiefs' exclusion was based upon the Hearing Officer's reading of C34:13A-3(d) of the statute which defines public employee and specifically excepts from that definition "heads and deputy heads of departments".

Petitioner excepts to the finding as to the Deputy Chiefs and urges that "established practice, prior agreement between the parties for a period in excess of 30 years should reinforce the position that the deputy chiefs should be included in the unit."

The Undersigned does not feel it necessary to rule upon the validity of the established practice argument in this context, since, even assuming arguendo that such history is established, it would not negate the exclusion of deputy heads of departments from coverage by the Act. The statute defines employee to "....include public employee, i.e. any person holding a position, by appointment or contract or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies...." Therefore, if the Deputy Chiefs of the Fire Department are deputy heads of a department within the meaning of the Act, they must be excluded regardless of their treatment in the past. Petitioner's reliance upon "established practice, prior agreement" as a basis for inclusion of Deputy Chiefs is misplaced. These statutory conditions, when met, affect only certain kinds of employees who in any event are at least entitled to exercise representation rights. Deputy heads of departments have no such entitlement.

I turn now to the question of whether the Chief and Deputy Chief are the Department Head and Deputy Department Head of the Department within the meaning of the Act.

The Township of Teaneck is organized under the Municipal Manager Act of the State of New Jersey. The statute sets out the powers of the Municipal Manager, in part, as follows, "the municipal manager

shall: a) be the chief executive officer and administrative official of the municipality;...d) appoint and remove all department heads and all other officers..." NJSA 40:82-4(a), (d).

Acting under its statutory authority, the Township Council of Teaneck passed an ordinance establishing a Fire Department in the Township and creating therein the positions of Chief of the Department, and Deputy Chiefs of the Department. (Township of Teaneck Ordinance #775. The Manual of the Fire Department, pursuant to Ordinance #775, sets out, in part, the following duties of the Chief; "The Chief shall (a) Have absolute command, control, charge, management and supervision of all members of the Department, subject to review by the Municipal Manager; (b) act as Executive Officer of the Department..." With regard to the Deputy Chief the Manual provides that he shall "...act as Chief in the absence or disability of the Chief, and at such times assume all authority, duties and responsibilities of that office..."

From this legislative framework, it is clear that the Chief is, in fact, "head" of the Teaneck Fire Department. Indeed, in a case involving a chief of police with a similar set of duties, the court has stated that the Chief was "in charge of his department subject only to general over-all control exercised by the city manager as chief executive and administrative official of the municipality with coextensive authority over all departments." Edelstein v. City of Asbury Park, 12 N.J. Super. 509, 79 A.2D 860 (1951). Clearly, the instant case is distinguishable on its facts from the City of Elizabeth and Elizabeth Police Superior Officers Association, Inc., P.E.R.C. No. 36,

in which the City code specifically provided "there shall be a police department, the head of which shall be the director". In the instant case, the Chief of the Fire Department, is both by statutory design and in fact the head of the Fire Department, and therefore is excluded from the unit.

There are four deputy chiefs in the Department, each having charge of an entire "platoon" or shift. They use an office in headquarters next to that of the Chief. Both the Manual, and the testimony indicate that they are authorized to, and in fact do, assume and exercise the normal day to day functions of the Chief in his absence. Again, in distinction to the situation found in City of Elizabeth supra, the Chief is the Head of the Department, the deputy does automatically assume the role of the Chief in his absence and is vested with the administrative authority of that office.

It is thus evident that they come within the essential meaning of the word deputy, i.e., a substitute authorized to act for another. I find that they are deputy department heads within the meaning of the Act, and therefore may not be included within any unit for collective negotiations.

The Employer has excepted to the Hearing Officer's finding that Lieutenants and Captains are not supervisors within the meaning of the Act.

By statutory construction, a supervisor is one having the authority to hire, discharge, discipline, or effectively recommend the same. The exercise of any one of these authorities is sufficient to qualify that person as a supervisor within the meaning of the Act.

A review of the record in this case indicates that with regard to the hiring and firing of personnel, the officers have neither the power to do so themselves, nor the power to effectively recommend such courses of action. The mere rendering of an opinion which is subject to independent analysis by the hiring authority does not constitute the high order of reliance necessary to meet the test of effective recommendation.

With regard to discharge, the record indicates that this may only be accomplished by having charges brought and a hearing held before the Chief. Although charges may be brought by an officer initially (indeed they may be brought by any member of the department) ultimate determination as to the discipline meted out resides in the Chief. Therefore, no officer either discharges personnel or has the authority to effectively recommend same.

With regard to disciplinary matters, however, it is apparent from the record that the officers do have certain authority. This authority consists of giving oral rerimands and the assignment of extra work details, of an onerous nature, for minor infractions, e.g. having the man clean the underneath of the truck. There is also testimony to the effect that in extreme circumstances an officer might "suspend" a fireman, but this would be immediately reported to the Chief who would make an independent determination as to whether loss of pay would be involved. Since this emergency action depends for its diciplinary nature on the determination of the Chief, it does not demonstrate disciplinary power of the officers. The above mentioned extra work assignments, however, are within the discretion and authority of the officers to administer and as such do constitute the power to discipline.

The Undersigned recognizes that this disciplinary power is limited to correcting lesser infractions. Major infractions, which testimony indicates rarely occur, are subject to charges and more serious punishments beyond the authority of these officers to administer. Nonetheless, the essential quality of the authority in question is not determined by the severity of the penalty imposed. I find that the imposition of extra work assignments, onerous in nature, as a reprisal for the breach of required conduct constitutes the exercise of disciplinary authority, and further that lieutenants and captains possess and exercise such authority in the performance of their duties. Accordingly, they are found to be supervisory employees within the meaning of the Act.

Petitioner herein further argues that notwithstanding a finding that the superior officers are supervisors, they are nevertheless to be included in the same unit with firemen since "established practice, prior agreement or special circumstance" dictates their inclusion. The Hearing Officer, while recognizing that petitioner "did not behave as a traditional labor union", nonetheless found that there was an established practice of including officers with the firemen in one unit for purpose of negotiations. The Employer has excepted to that finding.

The Act provides that no unit shall be appropriate which contains both supervisors and non-supervisors except where dictated by established practice, prior agreement or special circumstances. Use of the statutory language "dictated" indicates that there must be clear and convincing evidence that one or more of these three exceptional situations exists. Something more than a mere scintilla

of evidence is necessary to satisfy this requirement or it shall not be deemed sufficient to dictate divurgence from the normal unit pattern.

Additionally, the Undersigned will look to the substance of the evidence presented to determine if any of the exceptions have been demonstrated. A mere labeling of an event as a "negotiation", or of a document as an "agreement", a "demand" or a "request" will not suffice to demonstrate the substantive nature of the offered item. Again, only where it is clearly evident that the label accurately reflects the nature of the thing proffered will such label carry any weight.

With regard to the first exception, established practice, petitioner must present clear evidence that not only did the employer deal with petitioner, but also that those dealings amounted to collective negotiations and that these negotiations included both superior officers and rank and file firemen within the same unit. The essential elements for collective negotiations are the give and take of a bilateral relationship, through proposal and counter proposal directed towards consummation of a mutually acceptable agreement. 3/ This bilateral relationship is in distinction to a situation in which there is a unilateral establishment of terms and conditions of employment. 4/ It does not mean the solicited or unsolicited submission by the employee representative of wage and fringe benefit demands without more.

3/ Henry Hudson Regional School, E.D. No. 12.
4/ Middlesex County College, P.E.R.C. No. 29.

There appears to be little disagreement between the parties as to the broad outline of events. For approximately forty years FMBA Local 42 was the only organization active among fire department employees. For most of these years, prior to budget submission time, a committee of these employees usually under an FMBA letterhead would meet with the Township Manager to make known their requests for the following year. The Manager would then go to the Town Council, the governing body, and later report their decision back to the firemen. On occasion the firemen would request, and be granted, a meeting directly with the Council. Some time thereafter, a decision would be sent from the Town Manager to the firemen outlining the following year's benefits.

Petitioner insists that these meetings were bargaining sessions, complete with proposals and counter proposals and verbal agreements. The Employer urges that these were meetings merely to hear the views of its employees and that subsequently a unilateral decision was made by the Council, ultimately without regard to an effort to adjust differences in a mutually satisfactory manner.

Petitioner points to the experiance of three years, 1955, 1959, and 1968 as demonstrating the type of relationship required to meet the test for established practice. In 1955, a meeting was held, pursuant to a request by the firemen, regarding their request for a reduction of the working week to 56 hours. At the meeting the Town Manager asked them what reduction they really wanted, and receiving an answer of 63 hours, then informed the men they could choose between that hour reduction and wage equalization with the

police. In 1959-60, the evidence indicates that despite a request by the FMBA, the Township refused to make any salary committments unitl a survey by the Civil Service Department was completed. Some two months later a meeting was held between the FMBA Committee and the Township Manager and Mayor, at which the firemen threatened to go to referendum. From this meeting came agreement by the Mayor to resume consideration of the FMBA's request prior to budget submission regardless of the status of the survey. Again in 1968, the firemen got no response to their requests until they threatened to resort to referendum, and the Council met privately for one-half hour and acceded to the firemen's requests.

While the Undersigned recognizes that what transpired during these particular periods did amount to something more than the "communication of employees' desires" as the Township urges, it is also clear that it does not meet the requirements for established practice. To be sure, the FMBA met with the employer, and attempted to convince them of the merit of the requested changes, and also utilized the threat of going to the public as a means of procuring a favorable decision, but the final Township decision was a peremptory one, not the product of a reciprocal effort of strike a bargain or an effort to harmonize differences by agreement. The evidence is that even in these three year pointed out by petitioner the final benefits granted to employees contained items not even discussed with the FMBA Committee.

Further, the evidence presented as to the balance of the forty year history does not put petitoner any futher along the path towards demonstrating the required indicia of established practice. All three

witnesses at the remanded hearing admitted that the usual pattern was as described by petitioner's witness in attempting to point to counter proposals; "In other words, we asked for a certain figure, and they would make a proposal and say, 'this is going to be the figure' and I would bring this back to the men and whether by accept it or not, that was up to the membership.." Again, as Chief Murray testified on cross examination, "I'd say that our primary job was to convince the City Manager that we were worthy of what we were asking for and convince him and then he would present it to the Council. If the Council didn't agree with us, they would so inform the City Manager and in turn he would meet with the Committee or notify us by letter if it was denied. Then we would usually, [sic] or we would also request Council to allow us to go on referendum otherwise we would have to go out and get signatures... Once the Council turned us down we had no other recourse except for referendum, that was our only recourse.."

From this testimony, as to the generally followed procedure, I conclude that the three years which were examined in depth were the high water marks of the relationship existing here. A record of three years during which something approaching collective negotiations took place will not serve as sufficient to dictate an exception to the supervisory - non-supervisory dichotomy set forth in the Act.

Next to be considered is the "prior agreement" exception. Since it may be fairly assumed that the legislature intended that "prior agreement" not be synonomous with "established practice", this exception is construed to minimally refer to a particular kind of agreement, namely a written agreement setting terms and conditions of employment, reached in the context of collective negotiations, executed

by both parties and providing for the inclusion in one unit of supervisors and non-supervisors. 5/ It is crystal clear from the record that no agreement was ever set down and executed by these two parties as to any terms and conditions of employment for any unit whatsoever. Accordingly, I find that no "prior agreement" such as to form an exception to the supervisor - non-supervisor dichotomy exists in this case.

I further conclude that nothing in this record would support a finding that the third statutory exception "special circumstances", has been satisfied.

Therefore, having found that none of the statutory exceptions are present in this case, it is further found that the Lieutenants and Captains should properly be excluded as supervisors from the rank and file unit of firefighters.

The final exception raised by the public employer deals with the Hearing Officer's recommendation that the Fire Signal System Repairman should not properly be included in the firemen's unit. Initially it should be stated that the record indicates that there is also a Fire Signal System Supervisor, but other than revealing the existence of this position there is nothing in the record to indicate its status. From the record it also cannot be determined whether this position is or is not a part of the requested unit. For these reasons, no determination will be made as to the status of this position at this time, and in any subsequent election the individual filling that title may vote subject to challenge.

5/ Willingboro Board of Education, E.D. No.3

With regard to the repairman, there is found to be little merit to the Employer's exception. This employee does have a community of interest with rank and file employees of the Fire Department although his duties are to assist in the maintenance of the alarm system, rather than actually fighting fires. As the Hearing Officer points out, on occasion he does answer fire alarms and goes to the scene of fires. His salary is greater than a firemen's but it is based upon it and he shares the same fringe benefits with them. He works out of the firehouse where he must perform housekeeping duties within his area. On occasion he has assisted in fire-fighting or taken over desk jobs vacated by firemen called to action. Similary, firemen have taken over his job during his absence. Finally, he is under the jurisdiction of the Chief and subject to the same disciplinary action as the other personnel. For all of these reasons I find that the Fire Signal Systems Repairman should properly be included within the rank and file unit.

5. I find therefore, that the appropriate unit for collective negotiations is "All firemen, the fire system signal repairman and fire alarm operators employed by the Township of Teaneck but excluding the Chief, deputy Chiefs, Captains, Lieutenants, and other supervisors, craft and professional employees, and managerial executives, and police within the meaning of the Act."

Petitioner herein has never indicated its willingness to participate in an election for any unit other than stated in its petition. The Act, however, in Section 7, prohibits an organization which admits to membership nonsupervisory personnel from representing supervisors. It is clear therefore that in its present form, FMBA

Local 42 would be inelgible to take part in any representation election for the unit of lieutenants and captains who have been found to be supervisors, since it is undisputed that both superior officers and rank and file firemen are members of the FMBA.

The undersigned directs that an election in the unit of rank and filed firemen described above be held within thirty days of the date of this decision. If in fact Petitioner does not wish to participate in such election, it may withdraw its petition within 10 days from the date of this decision.

Those eligible to vote are employees set forth in Section 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Firemen's Mutual Benevolent Association, Local 42.

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

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

Maurice J. Nelligan, Jr.
Executive Director

DATED: January 15, 1971
Trenton, New Jersey

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION
DOCKET NO. R-90

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TOWNSHIP OF TEANECK,

Public Employer,

- and -

F.M.B.A., Local 42,

Petitioner.

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Hearing Officer's Report and Recommendations

Re: Teaneck Fire Department

APPEARANCES:

For The Township of Teaneck

Malcolm Blum, Attorney
Werner H. Schmid, Township Manager
Joseph R. Murray, Chief, Fire Department

For F.M.B.A., Local 42

Paul J. Giblin, Attorney
John J. Draney, President Local 42, F.M.B.A., Fireman, Teaneck Fire Department
Charles Greenhill, Lieutenant, Teaneck Fire Dept.
Michael T. Downs, Fireman, Teaneck Fire Department
William Lindsay, Jr., Superintendent of Fire Alarms, Teaneck Fire Department
Anthony Pannone, Captain, Teaneck Fire Department
William E. Connolly, Deputy Chief, Teaneck Fire Department
Leo M. Botyos, Deputy Chief, Teaneck Fire Dept.

On August 19, 1969 and September 4, 1969, hearings were held before the Undersigned, pursuant to the provisions of the New Jersey Employer-Employee Relations Act (Chapter 303, P.L. 1968) (hereinafter referred to as the "Act").

The evidence at the hearings clearly determined the following:[1]

a) The Township of Teaneck (hereinafter referred to as the Public Employer or Teaneck) is a "public employer" within the meaning of Section 3(c) of the Act and is subject to the provisions of the Act.

b) The petitioner, Firemen's Mutual Benevolent Association, Local 42 (hereinafter referred to as Petitioner) is a "representative" within the meaning of Section 3(e) of the Act;

c) The Petitioner is the only representative seeking to represent all or any part of the unit claimed;

d) A question concerning the representation of public employees exists since the Public Employer has refused to recognize the Petitioner as the exclusive representative of all or any part of the employees in the unit claimed.

A controversey arose as to whether those employees of the Teaneck Fire Department who are classified as officers, i.e., Lieutenants, Captains and Deputy Chiefs, Fire Alarm Operators, and Fire Signal Repairmen should be properly included in the unit comprise of Firemen. Pursuant to Section 8(d) of the Act, the New Jersey Public Employment Relations Commission directed this formal hearing.

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1. There was no contest by the parties as to these issues.

The Undersigned was appointed to act in the Commission's behalf to conduct the said hearing and report and make recommendations upon the issue of unit pursuant to Section 8(g) of the Act. Upon consideration of the evidence offered at the hearings and the entire record, I hereby make the following report and recommendations:

The Act specifies in Section 8(d) that a unit is not appropriate if it contains both supervisory and non-supervisory employees in the absence of established practice, prior agreement or special circumstances.

The Public Employer took the position that the officers, that is, Lieutenants, Captains and Deputy Chiefs are supervisors, and more particularly as to the Deputy Chiefs, that even if the Lieutenants and Captains are found not to be supervisors within the meaning of the Act, the Deputy Chiefs must be excluded from the unit in accord with Section 3(d) of the Act which excludes "... deputy heads of departments and agencies ..." from the statutory definition of "Public Employee".

The Public Employer also contends that as to the Fire Signal Repairman and Fire Alarm Operator that they should not be included in the unit of Firemen because of a lack of community of interest with the Firemen.

The Petitioner contends that the Lieutenants,

Captains and Deputy Chiefs are not supervisors within the meaning of the Act and even if they were supervisors there is an established practice between the parties over a long period which permits their inclusion in the unit claimed. As to the Fire Signal Repairman and Fire Alarm Operator, Petitioner contends that there is in fact a community of interest between these employees and the Firemen which mandate their inclusion in the unit.

The legislature has set forth broad guidelines for determination of an appropriate unit. Section 7 of the Act provides "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned ..." Prohibited absent established practice, prior agreement or special circumstances is the inclusion of supervisory employees in a unit of non-supervisory employees.

Lieutenants, Captains and Deputy Chiefs

All Firemen including officers and excepting the Chief have the same fringe benefits and working conditions. The salary levels have been historically related.

All Firemen including officers and excepting the Chief have the same overtime benefits, same sick leave policy, wear the same type of uniform, have the same platoon and shift hours. All are salaried and have the same vacation benefits. Pensions are the same and hospital-

ization program is the same. In sum virtually all working conditions and benefits are the same with the exception that officers have separate offices, locker and lavatory facilities.

The testimony by representatives of all ranks, i.e., Firemen, Lieutenants, Captains and Deputy Chiefs, was clearly demonstrative of the strong relationship felt between the men of the Fire Department ranks. All ranks are strongly dependent upon each other to the point that a man's life may depend upon the actions of his fellow Firemen be he officer or not. On duty and off duty the Fire Department employees apparently feel a strong bond between each other.

It is true that the officers do exercise authority befitting their rank, however such authority as is exercised is strongly delimited by the regulations of the Fire Department and the policies and guidelines laid down by the Chief and the Town Council. None of the officers has the power to hire or fire or to effectively recommend such action. They have a limited power to discipline, primarily if not completely, by assigning extra duties, however this is a power rarely if at all utilized.

The Fire Department is run as a "tight ship" by the Chief and limited authority is delegated to the officers. The Chief is the major respository of power and all

personnel actions go through channels. The Chief may on occasion act on the recommendations or opinions of his officers when they have possession of facts on a particular matter, however this is not sufficient to meet any definition of the power to effectively recommend personnel action.

There is clearly a basic community of interest between all the ranks such as common fringe benefits, hours, related salaries, common mission, interchange of job function, general working conditions, recreational pursuits and because of the nature of their profession a mutual relationship to be found only among those who are engaged in a dangerous mission. This is not overshadowed by any demonstrable conflicts and would seem to mandate that all the ranks be included in the same unit for the purpose of collective negotiations.

Furthermore, the Public Employer for at least 30 years recognized the Petitioner as a representative of all the ranks. The Public Employer negotiated pay, hours and working conditions with the Petitioner on behalf of all the ranks. The Public Employer does not term its meetings with the Petitioner prior to the enactment of the Act as "negotiations" but that is what they were by any reasonable definition. Dues have been deducted for some years for the Petitioner from the salaries of both officers and Firemen. The Public Employer knew that the officers were members of the Petitioner, in fact almost always the

bargaining committee that met with the Public Employer had officers on it, a fact of which the Public Employer had to have knowledge. The present Chief was himself a former participant in bargaining on behalf of the Petitioner at one time.

It would thus appear that even with a finding that the officers are supervisors that there is an established practice of including supervisory personnel with non-supervisory personnel in the same unit for negotiation.

There is one barrier to the inclusion of one officer rank in the negotiating unit that is the clear language of Section 3(d) of the Act which section defines the term "employee" and its inclusive part "public employee". The section referring to the term "employee" reads in part as follows:

> This term shall include public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district. (Emphasis supplied)

As can be seen from a reading of the Act only "employees" or "public employees" are afforded rights in collective negotiations. The Act speaks of the definition of the negotiation unit as follows: "The negotiating unit

shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute." (Emphasis supplied)

The Deputy Chiefs would appear to be "deputy heads" of a department in the language of Section 3(d) and as such excluded from the definition of "employee" or "public employee". This exclusion removes Deputy Chiefs from inclusion within a mandated unit under the Act.

There does not appear to be any prohibition against the inclusion of Deputy Chiefs in either a unit of officers or in a unit of officers and Firemen if the Public Employer voluntarily consents to such as seems to be the instance cited by Petitioner in its brief referring to the Elizabeth City Fire Department. However absent the Public Employer's consent the inclusion of the Deputy Chiefs in any negotiation unit would be outside the mandate of the Act. Apart from the language of Section 3(d) there would be no meritorious reason against inclusion of the Deputy Chiefs in the negotiation unit under consideration here.

The Fire Alarm Operator and Fire Signal Repairman

The Act states that "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned ..."

The Fire Alarm Operator, one Arthur Ridley, is responsible for the dispatching of fire apparatus to the scene of the fire however except for this duty he performs all of the duties that the Fireman-titled men do. He performs the same housecleaning duties, dresses the same as the Firemen, stands roll call, eats with the Firemen, sleeps in the same areas as the Firemen, utilizes the same lavatory and locker facilities, has the same working shift hours, work week length and receives the same fringe benefits as the Firemen. He marches in the parades and engages in recreational pursuits with the other Firemen.

In fact, at the hearing to a question concerning Ridley which was as follows: "He is like everybody, except he has one extra duty when an alarm comes in?" The reply of the Chief was "Yes".

It would appear manifest that by any reasonable interpretation of the facts and the statutory language that the Fire Alarm Operator, Ridley, has a "community of interest" with the other Firemen and should be included in the negotiating unit.

As to the Fire Signal Repairman, a Mr. Robert Owens, the facts are somewhat different. His duties are primarily to assist in the maintenance of the alarm system, which is essentially to repair and keep them in good order.

His working uniform can be the same as the Firemen, however on occasion it can differ. He works out of the headquarters building in an office reserved for the fire alarm personnel. The office has its own lavatory and locker room facilities. His work week differs from the other personnel. His salary is different from the Firemen however it is based on the Firemen's salary. His fringe benefits are the same as the Firemen, as are in fact almost all employees of the Township. He is under the jurisdiction of the Chief and is subject to the same disciplinary and grievance procedures as the Firemen. The Fire Signal Repair title is classified as a non-uniformed one primarily because his duties do not include fire-fighting, however Mr. Owens does answer fire alarms and goes to the scene of fires. He has at times assisted in the fighting of fires or handled jobs vacated by the Firemen going to fight the fire such as desk jobs and dispatching apparatus. Also in the absence of Mr. Owens, Firemen have taken over his duties. Mr. Owens wears the same /dress/ uniform as the Firemen albeit with different insignia, he marches in parades with the fire department, engages in recreational pursuits with the Firemen, he has similar housekeeping duties as the Firemen, but in his own work area. The Chief testified as to Mr. Owens "We class him as a member of the Fire Department." At another point the Chief answered to a question as whether Mr. Owens works closely with the other firemen, "I'd say, yes." Owens gets

the same fringe benefits. Owens is a member of the Petitioner and has his dues deducted as do the firemen.

Owens' status is not as clear as Ridley however on balance and in light of the fact that the parties have heretofore considered him as part of the unit, Owens should be included in the negotiating unit.

From all of the foregoing and upon the entire record, the following findings and recommendations are made:

1. The Lieutenants, Captains and Deputy Chiefs of the Teaneck Fire Department are not supervisors within the meaning of the Act.

2. The Deputy Chiefs of the Teaneck Fire Department are not "public employees" within the meaning of the Act.

3. The Fire Signal Repairman and Fire Alarm Operator do share a community of interest with the public employees within the unit claimed by Petitioner.

4. The Firemen, Lieutenants, Captains, Fire Signal Repairman, and Fire Alarm Operator are appropriate members of and should constitute the negotiation unit for the employees of the Teaneck Fire Department.

5. The majority representative of the negotiating unit of the employees of the Teaneck Fire Department is the Petitioner and as such may enter into collective negotiations with the Public Employer as to the wages, salaries, rates of pay, hours of employment and other conditions of

employment of the employees within the negotiating unit.[2]

Dated: October 21, 1969

JONAS AARONS

2. In view of the fact that there are no other employee representatives seeking to represent the employees within the negotiating unit and that virtually all of the employees within the unit are members of the Petitioner there would be little purpose in requiring an election be held to determine the bargaining representative for the unit.

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

On this 21st day of October, 1969, before me personally appeared JONAS AARONS, to me known and known to me to be the individual described in and who executed the within instrument and acknowledged to me that he executed the same.

Notary Public

BENJAMIN KOPF
Notary Public, State of New York
No. 31-7335150
Qualified in New York County
Commission Expires March 30, 1970.

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION
DOCKET NO. R-90

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TOWNSHIP OF TEANECK,

Public Employer,

- and -

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, LOCAL 42,

Petitioner.

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Hearing Officer's Report on Order of Remand

Re: Teaneck Fire Department

APPEARANCES:

For The Township of Teaneck

Malcolm Blum, Attorney
Werner H. Schmid, Township Manager
Joseph R. Murray, Chief of Fire Department

For F.M.B.A., Local 42

Paul J. Giblin, Attorney
John J. Draney, President, Local 42, F.M.B.A.

On March 10, 1970 and March 24, 1970, hearings were held before the Undersigned, pursuant to an Order of Remand and Notice of Hearing dated January 28, 1970 of the Public Employment Relations Board and the provisions of the New Jersey Employer-Employee Relations Act (Chapter 303, P.L. 1968) hereinafter referred to as the "Act".

The above hearings were held in accord with an Order of Remand of the Public Employment Relations Commission which Order set forth questions upon which evidence

was to be taken. The questions are as follows:

1. The precise nature of the relationship between the Employer and Petitioner and whether it differed in character from one period to another.
2. For what period or periods of time has Petitioner, acting in a capacity of Employee representative for wages, hours, terms or conditions of employment, represented a majority of all of the Employer's firemen, including officers.
3. If Petitioner enjoyed majority status, how was such demonstrated to the Employer and with what frequency.
4. If the Employer and Petitioner were parties to an agreement or agreements, were such binding and enforceable. If the relationship was governed, not by agreement but by legislative resolution, of what force and effect, if any, was such resolution.
5. Whether the Employer has dealt with any organization, other than Petitioner, as employee representative of its firemen/officers; if so, was majority status of such other representative(s) demonstrated to the Employer. If so, the specific nature of such relationship and the period involved.

Based upon the evidence presented at the hearings herein it is found as follows:

1. The precise nature of the relationship between the Employer and Petitioner and whether it differed in character from one period to another.

Since the early 1930's the Petitioner has enjoyed a de facto relationship with the Employer whereby Petitioner dealt with Employer on at least some terms and conditions of employment of the firemen and officers of the Teaneck Fire Department. Employer maintains that it merely permitted Petitioner to make proposals to it as to terms and conditions of employment and that it never considered Petitioner as the representative of the firemen and officers. Petitioner was considered by the Employer to be a fraternal organization and that Employer communicated with Petitioner on issues involving terms and conditions of employment because it was convenient to do so and any dealing on such issues was done in a paternalistic fashion.

Regardless of Employer's motives it is clear that it did deal with Petitioner on terms and conditions of employment of firemen and officers. The Employer almost always communicated with Petitioner rather than individual firemen or officers on grievances and proposals affecting terms and conditions of employment. The Petitioner acted as the representative of employees on grievances and it made proposals on changes in terms and

conditions of employment. Petitioner utilized whatever means were available to effectuate its ends. When making its proposals to the Employer it tried persuasion as to the justice of its proposals, it brought in evidence of comparable conditions in neighboring districts, as well as evidence of changes in the cost of living and similar materials. Such is the stuff of collective bargaining. Petitioner was ready to make compromises in the course of seeking the effectuation of its proposals and apparently such was not uncommon. Petitioner on occasion when it could not attain its ends via the route of persuasion and discussion threatened recourse to going on referendum to the citizenry which apparently was somewhat effective as a threat on at least one occasion. Petitioner also brought suit in the Courts when it could not attain its ends by other means. The Employer describes its dealings with Petitioner as a "take it or leave it" kind of affair however Petitioner did not view things in that way for it did not "take it or leave it" on at least some occasions when it tried other routes to effectuate its goals. True, Petitioner did not behave as a traditional labor union might because it is not nor was a labor union in the sense that one finds such organization in private employment. Chapter 303 is a relatively recent innovation in this State and prior to this statute there was little that an employee organization could do to effectuate its aims except attempt to persuade, and if failing by that means

go to referendum or litigate. Public employee organizations cannot strike. Public employers prior to Chapter 303 were under no statutory duty to negotiate in the full sense that such is required today. Petitioner was an employee representative in the fashion permitted it by law and circumstance prior to the Act and for a period apparently going back to the early 1930's at least.

The fact that Petitioner may have been a fraternal or social organization does not necessarily disqualify it from being an employee organization for an analogy might be made with decisions under the National Labor Relations Act which have held that the fact that an organization engages in social activities does not disqualify it as a labor organization. Further even assuming arguendo that Employer never did bargain with Petitioner there are analogous decisions under the National Labor Relations Act which also hold that neither a collective bargaining agreement nor actual bargaining is necessary to find that an organization which discusses labor relations problems with an Employer is a labor organization.

The reality of the situation was that Employer did in a de facto sense recognize Petitioner as the representative of the firemen and officers and did deal with it on terms and conditions of employment for a

period extending back to the early 1930's. Further that such relationship did not materially differ in character from one period to another until the Act was enacted when the Employer refused to recognize the Petitioner as the Employee Representative of the negotiating unit claimed by Petitioner.

2. For what period or periods of time has Petitioner, acting in a capacity of Employee representative for wages, hours, terms or conditions of employment, represented a majority of all of the Employer's firemen, including Officers.

The Petitioner has so acted for a period in excess of thirty years. The evidence demonstrates that the Petitioner has for more than thirty years acted as the representative of a majority of the fireman, including officers on wages, hours, terms or conditions of employment.

3. If Petitioner enjoyed majority status, how was such demonstrated to the Employer and with what frequency.

Petitioner prior to the enactment of the Act apparently never in a formal fashion demonstrated its majority status and Employer never requested any such demonstration. However for some years the Petitioner's dues were deducted from the pay of the employees and the number of such employees having such check-off was

apparently the majority of employees. The Employer apparently always assumed that Petitioner did represent a majority of the employees and the testimony at the hearings was such that there can be little doubt that such was the case over the years since Petitioner's incorporation in 1929. The evidence demonstrated that over the years Petitioner had almost all employees as members.

4. If the Employer and Petitioner were parties to an agreement or agreements, were such binding and enforceable. If the relationship was governed, not by agreement but by legislative resolution, of what force and effect, if any, was such resolution.

The parties have never entered into a written agreement as such. They have agreed on terms which have later been incorporated into ordinances or Personnel Rules and Regulations enacted by the Teaneck Town Council which are enforceable either via the grievance procedure for town employees or through redress to the courts. The parties believed such ordinances or rules or regulations to be binding upon them. if not otherwise in violation of law.

5. Whether the Employer has dealt with any organization, other than Petitioner, as employee representative of its firemen/officers; if so was majority

status of such other representative(s) demonstrated to the Employer. If so, the specific nature of such relationship and the period involved.

The Employer has never dealt with any organization other than Petitioner as employee representative of its firemen and/or officers.

DATED: May 15, 1970

JONAS AARONS

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

On this 15 day of May, 1970, before me personally appeared JONAS AARONS, to me known and known to me to be the individual described in and who executed the within instrument and acknowledged to me that he executed the same.

Notary Public

DAVID ALTSCHUL
Notary Public, State of New York
No. 31-5062725
Qualified in New York County
Commission Expires March 30, 1972

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION
DOCKET NO. R-90

TOWNSHIP OF TEANECK,
Public Employer,

-and-

F.M.B.A., Local 42,
Petitioner.

Hearing Officer's Supplemental Report and Recommendations on Order of Remand

Re: Teaneck Fire Department

On August 19, 1969 and September 4, 1969 hearings were held before the undersigned and thereafter the Hearing Officer issued a Report and Recommendations which were dated October 21, 1969.

On January 28, 1970 by Order of the Public Employment Relations Commission this matter was remanded for further hearings on certain questions set forth in the Order of Remand.

On March 10, 1970 and March 24, 1970 hearings were held before the Hearing Officer pursuant to the Order of Remand of January 28, 1970.

On May 15, 1970 the Hearing Officer issued a Report on the Order of Remand.

The following is supplemental to the Report on the Order of Remand issued May 15, 1970 and constitutes the Recommendations of the Hearing Officer on the issues originally presented in this matter:

RECOMMENDATIONS

The recommendations made in the Hearing Officer's Report and Recommendations issued on October 21, 1969 are hereby affirmed and repeated with full force and effect as if set forth herein at length.

Dated: May 20, 1970

JONAS AARONS

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

On this 20 day of May, 1970, before me personally appeared JONAS AARONS, to me known and known to me to be the individual described in and who executed the within instrument and acknowledged to me that he executed the same.

Lawrence Lauer

LAWRENCE LAUER
NOTARY PUBLIC, State of New York
No. 41-7441350
Qualified in Westchester County
Term Expires March 30, 1972

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NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION
DOCKET NO. R-90

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TOWNSHIP OF TEANECK,

Public Employer,

- and -

F.M.B.A., Local 42,

Petitioner.

----------x

Hearing Officer's Report and Recommendations

Re: Teaneck Fire Department

APPEARANCES:

For The Township of Teaneck

Malcolm Blum, Attorney
Werner H. Schmid, Township Manager
Joseph R. Murray, Chief, Fire Department

For F.M.B.A., Local 42

Paul J. Giblin, Attorney
John J. Draney, President Local 42, F.M.B.A., Fireman, Teaneck Fire Department
Charles Greenhill, Lieutenant, Teaneck Fire Dept.
Michael T. Downs, Fireman, Teaneck Fire Department
William Lindsay, Jr., Superintendent of Fire Alarms, Teaneck Fire Department
Anthony Pannone, Captain, Teaneck Fire Department
William E. Connolly, Deputy Chief, Teaneck Fire Department
Leo M. Botyos, Deputy Chief, Teaneck Fire Dept.

On August 19, 1969 and September 4, 1969, hearings were held before the Undersigned, pursuant to the provisions of the New Jersey Employer-Employee Relations Act (Chapter 303, P.L. 1968) (hereinafter referred to as

The evidence at the hearings clearly determined the following:[1]

a) The Township of Teaneck (hereinafter referred to as the Public Employer or Teaneck) is a "public employer" within the meaning of Section 3(c) of the Act and is subject to the provisions of the Act.

b) The petitioner, Firemen's Mutual Benevolent Association, Local 42 (hereinafter referred to as Petitioner) is a "representative" within the meaning of Section 3(e) of the Act;

c) The Petitioner is the only representative seeking to represent all or any part of the unit claimed;

d) A question concerning the representation of public employees exists since the Public Employer has refused to recognize the Petitioner as the exclusive representative of all or any part of the employees in the unit claimed.

A controversey arose as to whether those employees of the Teaneck Fire Department who are classified as officers, i.e., Lieutenants, Captains and Deputy Chiefs, Fire Alarm Operators, and Fire Signal Repairmen should be properly included in the unit comprise of Firemen. Pursuant to Section 8(d) of the Act, the New Jersey Public Employment Relations Commission directed this formal hearing.

The Undersigned was appointed to act in the Commission's behalf to conduct the said hearing and report and make recommendations upon the issue of unit pursuant to Section 8(g) of the Act. Upon consideration of the evidence offered at the hearings and the entire record, I hereby make the following report and recommendations:

The Act specifies in Section 8(d) that a unit is not appropriate if it contains both supervisory and non-supervisory employees in the absence of established practice, prior agreement or special circumstances.

The Public Employer took the position that the officers, that is, Lieutenants, Captains and Deputy Chiefs are supervisors, and more particularly as to the Deputy Chiefs, that even if the Lieutenants and Captains are found not to be supervisors within the meaning of the Act, the Deputy Chiefs must be excluded from the unit in accord with Section 3(d) of the Act which excludes "... deputy heads of departments and agencies ..." from the statutory definition of "Public Employee".

The Public Employer also contends that as to the Fire Signal Repairman and Fire Alarm Operator that they should not be included in the unit of Firemen because of a lack of community of interest with the Firemen.

Captains and Deputy Chiefs are not supervisors within the meaning of the Act and even if they were supervisors there is an established practice between the parties over a long period which permits their inclusion in the unit claimed. As to the Fire Signal Repairman and Fire Alarm Operator, Petitioner contends that there is in fact a community of interest between these employees and the Firemen which mandate their inclusion in the unit.

The legislature has set forth broad guidelines for determination of an appropriate unit. Section 7 of the Act provides "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned ..." Prohibited absent established practice, prior agreement or special circumstances is the inclusion of supervisory employees in a unit of non-supervisory employees.

Lieutenants, Captains and Deputy Chiefs

All Firemen including officers and excepting the Chief have the same fringe benefits and working conditions. The salary levels have been historically related.

All Firemen including officers and excepting the Chief have the same overtime benefits, same sick leave policy, wear the same type of uniform, have the same platoon and shift hours. All are salaried and have the

ization program is the same. In sum virtually all working conditions and benefits are the same with the exception that officers have separate offices, locker and lavatory facilities.

The testimony by representatives of all ranks, i.e., Firemen, Lieutenants, Captains and Deputy Chiefs, was clearly demonstrative of the strong relationship felt between the men of the Fire Department ranks. All ranks are strongly dependent upon each other to the point that a man's life may depend upon the actions of his fellow Firemen be he officer or not. On duty and off duty the Fire Department employees apparently feel a strong bond between each other.

It is true that the officers do exercise authority befitting their rank, however such authority as is exercised is strongly delimited by the regulations of the Fire Department and the policies and guidelines laid down by the Chief and the Town Council. None of the officers has the power to hire or fire or to effectively recommend such action. They have a limited power to discipline, primarily if not completely, by assigning extra duties, however this is a power rarely if at all utilized.

The Fire Department is run as a "tight ship" by

personnel actions go through channels. The Chief may on occasion act on the recommendations or opinions of his officers when they have possession of facts on a particular matter, however this is not sufficient to meet any definition of the power to effectively recommend personnel action.

There is clearly a basic community of interest between all the ranks such as common fringe benefits, hours, related salaries, common mission, interchange of job function, general working conditions, recreational pursuits and because of the nature of their profession a mutual relationship to be found only among those who are engaged in a dangerous mission. This is not overshadowed by any demonstrable conflicts and would seem to mandate that all the ranks be included in the same unit for the purpose of collective negotiations.

Furthermore, the Public Employer for at least 30 years recognized the Petitioner as a representative of all the ranks. The Public Employer negotiated pay, hours and working conditions with the Petitioner on behalf of all the ranks. The Public Employer does not term its meetings with the Petitioner prior to the enactment of the Act as "negotiations" but that is what they were by any reasonable definition. Dues have been deducted for some years for the Petitioner from the salaries of both officers and Fire-

bargaining committee that met with the Public Employer had officers on it, a fact of which the Public Employer had to have knowledge. The present Chief was himself a former participant in bargaining on behalf of the Petitioner at one time.

It would thus appear that even with a finding that the officers are supervisors that there is an established practice of including supervisory personnel with non-supervisory personnel in the same unit for negotiation.

There is one barrier to the inclusion of one officer rank in the negotiating unit that is the clear language of Section 3(d) of the Act which section defines the term "employee" and its inclusive part "public employee". The section referring to the term "employee" reads in part as follows:

> This term shall include public employee, i.e., any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district. (Emphasis supplied)

As can be seen from a reading of the Act only "employees" or "public employees" are afforded rights in

shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute." (Emphasis supplied)

The Deputy Chiefs would appear to be "deputy heads" of a department in the language of Section 3(d) and as such excluded from the definition of "employee" or "public employee". This exclusion removes Deputy Chiefs from inclusion within a mandated unit under the Act.

There does not appear to be any prohibition against the inclusion of Deputy Chiefs in either a unit of officers or in a unit of officers and Firemen if the Public Employer voluntarily consents to such as seems to be the instance cited by Petitioner in its brief referring to the Elizabeth City Fire Department. However absent the Public Employer's consent the inclusion of the Deputy Chiefs in any negotiation unit would be outside the mandate of the Act. Apart from the language of Section 3(d) there would be no meritorious reason against inclusion of the Deputy Chiefs in the negotiation unit under consideration here.

The Fire Alarm Operator and Fire Signal Repairman

The Act states that "The negotiating unit shall

The Fire Alarm Operator, one Arthur Ridley, is responsible for the dispatching of fire apparatus to the scene of the fire however except for this duty he performs all of the duties that the Fireman-titled men do. He performs the same housecleaning duties, dresses the same as the Firemen, stands roll call, eats with the Firemen, sleeps in the same areas as the Firemen, utilizes the same lavatory and locker facilities, has the same working shift hours, work week length and receives the same fringe benefits as the Firemen. He marches in the parades and engages in recreational pursuits with the other Firemen.

In fact, at the hearing to a question concerning Ridley which was as follows: "He is like everybody, except he has one extra duty when an alarm comes in?" The reply of the Chief was "Yes".

It would appear manifest that by any reasonable interpretation of the facts and the statutory language that the Fire Alarm Operator, Ridley, has a "community of interest" with the other Firemen and should be included in the negotiating unit.

As to the Fire Signal Repairman, a Mr. Robert Owens, the facts are somewhat different. His duties are primarily to assist in the maintenance of the alarm system,

His working uniform can be the same as the Firemen, however on occasion it can differ. He works out of the headquarters building in an office reserved for the fire alarm personnel. The office has its own lavatory and locker room facilities. His work week differs from the other personnel. His salary is different from the Firemen however it is based on the Firemen's salary. His fringe benefits are the same as the Firemen, as are in fact almost all employees of the Township. He is under the jurisdiction of the Chief and is subject to the same disciplinary and grievance procedures as the Firemen. The Fire Signal Repair title is classified as a non-uniformed one primarily because his duties do not include fire-fighting, however Mr. Owens does answer fire alarms and goes to the scene of fires. He has at times assisted in the fighting of fires or handled jobs vacated by the Firemen going to fight the fire such as desk jobs and dispatching apparatus. Also in the absence of Mr. Owens, Firemen have taken over his duties. Mr. Owens wears the same /dress/ uniform as the Firemen albeit with different insignia, he marches in parades with the fire department, engages in recreational pursuits with the Firemen, he has similar housekeeping duties as the Firemen, but in his own work area. The Chief testified as to Mr. Owens "We class him as a member of the Fire Department." At another point the Chief answered to a question as whether Mr. Owens works

the same fringe benefits. Owens is a member of the Petitioner and has his dues deducted as do the firemen.

Owens' status is not as clear as Ridley however on balance and in light of the fact that the parties have heretofore considered him as part of the unit, Owens should be included in the negotiating unit.

From all of the foregoing and upon the entire record, the following findings and recommendations are made:

1. The Lieutenants, Captains and Deputy Chiefs of the Teaneck Fire Department are not supervisors within the meaning of the Act.

2. The Deputy Chiefs of the Teaneck Fire Department are not "public employees" within the meaning of the Act.

3. The Fire Signal Repairman and Fire Alarm Operator do share a community of interest with the public employees within the unit claimed by Petitioner.

4. The Firemen, Lieutenants, Captains, Fire Signal Repairman, and Fire Alarm Operator are appropriate members of and should constitute the negotiation unit for the employees of the Teaneck Fire Department.

5. The majority representative of the negotiating unit of the employees of the Teaneck Fire Department is the

employment of the employees within the negotiating unit.

Dated: October 21, 1969

JONAS AARONS

2. In view of the fact that there are no other employee representatives seeking to represent the employees within the negotiating unit and that virtually all of the employees within the unit are members of the Petitioner there would be little purpose in requiring an election be held to determine the bargaining representative for the unit.

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

On this 21st day of October, 1969, before me personally appeared JONAS AARONS, to me known and known to me to be the individual described in and who executed the within instrument and acknowledged to me that he executed the same.

Notary Public

BENJAMIN KOPF
Notary Public, State of New York

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION
DOCKET NO. R-90

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TOWNSHIP OF TEANECK,

Public Employer,

- and -

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, LOCAL 42,

Petitioner.

----------x

Hearing Officer's Report on Order of Remand

Re: Teaneck Fire Department

APPEARANCES:

For The Township of Teaneck

Malcolm Blum, Attorney
Werner H. Schmid, Township Manager
Joseph R. Murray, Chief of Fire Department

For F.M.B.A., Local 42

Paul J. Giblin, Attorney
John J. Draney, President, Local 42, F.M.B.A.

On March 10, 1970 and March 24, 1970, hearings were held before the Undersigned, pursuant to an Order of Remand and Notice of Hearing dated January 28, 1970 of the Public Employment Relations Board and the provisions of the New Jersey Employer-Employee Relations Act (Chapter 303, P.L. 1968) hereinafter referred to as the "Act".

was to be taken. The questions are as follows:

1. The precise nature of the relationship between the Employer and Petitioner and whether it differed in character from one period to another.
2. For what period or periods of time has Petitioner, acting in a capacity of Employee representative for wages, hours, terms or conditions of employment, represented a majority of all of the Employer's firemen, including officers.
3. If Petitioner enjoyed majority status, how was such demonstrated to the Employer and with what frequency.
4. If the Employer and Petitioner were parties to an agreement or agreements, were such binding and enforceable. If the relationship was governed, not by agreement but by legislative resolution, of what force and effect, if any, was such resolution.
5. Whether the Employer has dealt with any organization, other than Petitioner, as employee representative of its firemen/officers; if so, was majority status of such other representative(s) demonstrated to the Employer. If so, the specific nature of such relationship and the period involved.

Based upon the evidence presented at the hearings herein it is found as follows:

1. The precise nature of the relationship between the Employer and Petitioner and whether it differed in character from one period to another.

Since the early 1930's the Petitioner has enjoyed a de facto relationship with the Employer whereby Petitioner dealt with Employer on at least some terms and conditions of employment of the firemen and officers of the Teaneck Fire Department. Employer maintains that it merely permitted Petitioner to make proposals to it as to terms and conditions of employment and that it never considered Petitioner as the representative of the firemen and officers. Petitioner was considered by the Employer to be a fraternal organization and that Employer communicated with Petitioner on issues involving terms and conditions of employment because it was convenient to do so and any dealing on such issues was done in a paternalistic fashion.

Regardless of Employer's motives it is clear that it did deal with Petitioner on terms and conditions of employment of firemen and officers. The Employer almost always communicated with Petitioner rather than individual firemen or officers on grievances and proposals affecting terms and conditions of employment. The Peti-

conditions of employment. Petitioner utilized whatever means were available to effectuate its ends. When making its proposals to the Employer it tried persuasion as to the justice of its proposals, it brought in evidence of comparable conditions in neighboring districts, as well as evidence of changes in the cost of living and similar materials. Such is the stuff of collective bargaining. Petitioner was ready to make compromises in the course of seeking the effectuation of its proposals and apparently such was not uncommon. Petitioner on occasion when it could not attain its ends via the route of persuasion and discussion threatened recourse to going on referendum to the citizenry which apparently was somewhat effective as a threat on at least one occasion. Petitioner also brought suit in the Courts when it could not attain its ends by other means. The Employer describes its dealings with Petitioner as a "take it or leave it" kind of affair however Petitioner did not view things in that way for it did not "take it or leave it" on at least some occasions when it tried other routes to effectuate its goals. True, Petitioner did not behave as a traditional labor union might because it is not nor was a labor union in the sense that one finds such organization in private employment. Chapter 303 is a relatively recent innovation in this

go to referendum or litigate. Public employee organizations cannot strike. Public Employers prior to Chapter 303 were under no statutory duty to negotiate in the full sense that such is required today. Petitioner was an employee representative in the fashion permitted it by law and circumstance prior to the Act and for a period apparently going back to the early 1930's at least.

The fact that Petitioner may have been a fraternal or social organization does not necessarily disqualify it from being an employee organization for an analogy might be made with decisions under the National Labor Relations Act which have held that the fact that an organization engages in social activities does not disqualify it as a labor organization. Further even assuming arguendo that Employer never did bargain with Petitioner there are analogous decisions under the National Labor Relations Act which also hold that neither a collective bargaining agreement nor actual bargaining is necessary to find that an organization which discusses labor relations problems with an Employer is a labor organization.

The reality of the situation was that Employer did in a de facto sense recognize Petitioner as

period extending back to the early 1930's. Further that such relationship did not materially differ in character from one period to another until the Act was enacted when the Employer refused to recognize the Petitioner as the Employee Representative of the negotiating unit claimed by Petitioner.

2. For what period or periods of time has Petitioner, acting in a capacity of Employee representative for wages, hours, terms or conditions of employment, represented a majority of all of the Employer's firemen, including Officers.

The Petitioner has so acted for a period in excess of thirty years. The evidence demonstrates that the Petitioner has for more than thirty years acted as the representative of a majority of the fireman, including officers on wages, hours, terms or conditions of employment.

3. If Petitioner enjoyed majority status, how was such demonstrated to the Employer and with what frequency.

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apparently the majority of employees. The Employer apparently always assumed that Petitioner did represent a majority of the employees and the testimony at the hearings was such that there can be little doubt that such was the case over the years since Petitioner's incorporation in 1929. The evidence demonstrated that over the years Petitioner had almost all employees as members.

4. If the Employer and Petitioner were parties to an agreement or agreements, were such binding and enforceable. If the relationship was governed, not by agreement but by legislative resolution, of what force and effect, if any, was such resolution.

The parties have never entered into a written agreement as such. They have agreed on terms which have later been incorporated into ordinances or Personnel Rules and Regulations enacted by the Teaneck Town Council which are enforceable either via the grievance procedure for town employees or through redress to the courts. The parties believed such ordinances or rules or regulations to be binding upon them if not otherwise in violation of law.

5. Whether the Employer has dealt with any

status of such other representative(s) demonstrated to the Employer. If so, the specific nature of such relationship and the period involved.

The Employer has never dealt with any organization other than Petitioner as employee representative of its firemen and/or officers.

DATED: May 15, 1970

JONAS AARONS

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

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Notary Public

DAVID ALTSCHUL
Notary Public, State of New York
No. 31-5062725
Qualified in New York County
Commission Expires March 30, 1972

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION
DOCKET NO. R-90

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TOWNSHIP OF TEANECK,
Public Employer,

-and-

F.M.B.A., Local 42,
Petitioner.

Hearing Officer's Supplemental Report and Recommendations on Order of Remand

Re: Teaneck Fire Department

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The following is supplemental to the Report on the Order of Remand issued May 15, 1970 and constitutes the Recommendations of the Hearing Officer on the issues originally presented in this matter:

RECOMMENDATIONS

The recommendations made in the Hearing Officer's Report and Recommendations issued on October 21, 1969 are hereby affirmed and repeated with full force and effect as if set forth herein at length.

STATE OF NEW YORK)
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