

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

CITY OF HACKENSACK,

Public Employer,

-and-

DOCKET NO. CU-77-4

LOCAL 2081, HACKENSACK FIRE  
FIGHTERS, IAFF, AFL-CIO,

Petitioner.

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CITY OF HACKENSACK,

Public Employer,

-and-

DOCKET NO. RO-78-40

LOCAL 2081-A, HACKENSACK FIRE  
FIGHTERS, IAFF, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation dismisses a Petition for Certification of Public Employee Representative filed by Local 2081-A, Hackensack Fire Fighters, IAFF, seeking a proposed unit comprised of civilian paramedics, civilian EMTs (emergency medical technicians), fire department mechanics and the fire signal repairer. With regard to the Clarification of Unit Petition filed by Local 2081, Hackensack Fire Fighters, IAFF, seeking a determination that paramedics/UFD, EMTs/UFD, the fire department clerk and the fire inspectors are included in an existing negotiations unit of firefighters, the Director clarifies the Local 2081 unit as including fire inspectors; but excluding paramedics/UFD, EMTs/UFD and the fire department clerk.

The Director, in dismissing the Local 2081-A Petition for Certification, determines that the appropriate unit for collective negotiations is one including all paramedics and EMTs

employed by the City -- i.e., all paramedics/UFD, all EMTs/UFD, all civilian paramedics and all civilian EMTs; and excluding the fire mechanics, the signal repairer, managerial executives, confidential employees, police employees, supervisors within the meaning of the Act and all other employees.

The Director also determines that the CETA employees petitioned for herein are public employees of the City and are entitled to representation rights under the Act. The Director also determines, in agreement with the findings and recommendations of the Hearing Officer, that the blue collar unit currently represented by Council No. 5, New Jersey Civil Service Association, is the most appropriate unit for the representation of the repairer and the mechanics.

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Petitioner.

Appearances:

For the Public Employer  
Murray, Granello & Kenney, Esqs.  
(James P. Granello, of Counsel)

For the Petitioners  
Schneider, Cohen & Solomon, Esqs.  
(David Solomon, of Counsel)

DECISION

On July 28, 1976, a Petition for Clarification of Unit (the "CU Petition"), Docket No. CU-77-4, was filed with the Public Employment Relations Commission (the "Commission") by Local 2081,

Hackensack Fire Fighters, IAFF, AFL-CIO ("Local 2081") raising a question concerning the composition of a collective negotiations unit of rank and file firefighting employees of the City of Hackensack (the "City") which Local 2081 represents. On September 9, 1977, a Petition for Certification of Public Employee Representative (the "RO Petition"), Docket No. RO-78-40, was filed with the Commission by Local 2081-A, Hackensack Fire Fighters, IAFF, AFL-CIO ("Local 2081-A") raising a question concerning the representation of certain employees of the City in a proposed collective negotiations unit which is specifically described below. <sup>1/</sup> Pursuant to N.J.A.C. 19:11-2.6, these matters were consolidated by an order of the undersigned dated October 24, 1977.

Pursuant to a Notice of Hearing dated October 24, 1977, a hearing was held before Hearing Officer James F. Schwerin on December 8, 1977 and March 29, 1978, in Newark, New Jersey. At the hearing, all parties were given the opportunity to examine and to cross-examine witnesses, to present evidence and to argue orally. A post-hearing brief was filed by the City on May 22, 1978. Locals 2081 and 2081-A did not file post-hearing briefs.

The Hearing Officer issued his Report and Recommendations on September 29, 1978, a copy of which is attached hereto and made a part hereof. The City filed exceptions to the Hearing Officer's Report and Recommendations on October 16, 1978. Neither Local 2081

<sup>1/</sup> Local 2081-A proposed a collective negotiations unit consisting of: (1) civilian paramedics; (2) civilian EMTs (emergency medical technicians); (3) fire department mechanics ("mechanics"); and (4) the fire signal repairer (a.k.a. police and fire signal repairer or fire alarm electrician; hereinafter "repairer").

nor Local 2081-A has filed exceptions; nor has either Local filed an answering brief to the City's exceptions.

The undersigned has carefully considered the entire record in this proceeding and on the facts in this case finds and determines as follows:

1. The City of Hackensack is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this proceeding, and is subject to the Act's provisions. 2/

2. Local 2081 and Local 2081-A, Hackensack Fire Fighters, IAFF, AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions. 3/

3. Local 2081 currently is the recognized representative of a collective negotiations unit consisting of:

all Fire Fighters employed by the City  
excluding craft employees, police officers,  
office clericals, fire superiors, supervisors  
within the meaning of the Act, managerial  
executives, officers and all others. 4/

Through its Petition for Clarification of Unit, Local 2081 claims

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2/ A determination concerning the status of the City as the employer of certain of the petitioned-for employees is set forth infra, p.8.

3/ A determination concerning the status of Local 2081-A as an employee representative is set forth infra, p.6.

4/ Exhibit J-3, Article 2, Recognition Clause of the Agreement between the City and Local 2081 covering the period from January 1, 1977 to December 31, 1980.

to represent in its unit: (1) uniformed firefighters serving as paramedics ("paramedic/UFD"); (2) uniformed firefighters serving as EMTs ("EMT/UFD"); (3) uniformed firefighters serving in the Fire Prevention Bureau ("fire inspectors"); and (4) the uniformed firefighter serving in the position of Fire Department Clerk ("Department clerk").

4. Local 2081-A, in its proposed unit, seeks to represent: (1) civilian paramedics; (2) civilian EMTs (emergency medical technicians); (3) fire department mechanics; and (4) the fire signal repairer (a.k.a. police and fire signal repairer or fire alarm electrician).

5. The City contends that the mechanics and the repairer sought by Local 2081-A have historically been included in an existing unit of blue collar employees (blue collar/DPW employees) represented by Council No. 5, New Jersey Civil Service Association, <sup>5/</sup> and that the mechanics and repairer lack a sufficient community of interest to be in a unit with civilian paramedics and EMTs; that the fire inspectors do not possess a sufficient community of interest with all uniformed firefighters to warrant inclusion in Local 2081's firefighter unit; and that the paramedics/UFD and EMTs/UFD lack a sufficient community of interest with firefighters to be included in the firefighter unit. The City further maintains that the Commission lacks jurisdiction over certain employees who are employed under the federal Comprehensive Employment and Training

<sup>5/</sup> Although its president testified at the hearing, Council No. 5 has not sought to intervene in this proceeding.

Act ("CETA") and thus may not confer any representation rights upon them under the [New Jersey Employer-Employee Relations] Act.

Accordingly, as there exists both a question concerning the composition of a collective negotiations unit and a question concerning representation of employees, and as a dispute exists, the instant matter is properly before the undersigned for determination.

6. The Hearing Officer concluded that the existing unit represented by Local 2081 -- all firefighters -- should be clarified to include the paramedics/UFD, and EMTs/UFD, the fire inspectors and the Department clerk. Further, the Hearing Officer recommended that a unit comprised of civilian paramedics and civilian EMTs is an appropriate negotiations unit, but that the mechanics and repairer should be excluded therefrom.

7. The City filed exceptions to the Hearing Officer's Report and Recommendations. In exceptions 1, 4 and 5, the City disputes the Hearing Officer's recommendations that the firefighters' unit should be clarified to include paramedics/UFD, EMTs/UFD, the Department clerk and fire inspectors. The City contends that the Hearing Officer did not rely on community of interest standards and misinterpreted N.J.S.A. 34:13A-15. In exceptions 2 and 3, the City objects to the Hearing Officer's recommendation that a unit of civilian paramedics and civilian EMTs is an appropriate unit for negotiations. The City contends that CETA employees, who constitute a majority of the unit petitioned for by Local 2081-A,

are not public employees within the meaning of the Act but are federal employees. Accordingly, the City maintains that the Commission has no jurisdiction over CETA employees. The City further asserts that the representation of a unit of non-firefighting employees by Local 2081-A -- which the City claims is the same organization as Local 2081 -- would give rise to an impermissible conflict of interest, and, further, that Local 2081 has evidenced hostility toward CETA employees.

Finally, in exception 6, the City maintains that inasmuch as Local 2081-A is the same organization as Local 2081, and since Local 2081 has current and recently expired agreements with the City, the RO Petition is untimely under the Commission's rules. <sup>6/</sup>

The undersigned will first address two preliminary issues:  
(1) the status of Local 2081-A as an employee representative; and  
(2) the status and rights under the Act of the CETA employees herein.

N.J.S.A. 34:13A-3(e) defines the term "representative" as including:

any organization, agency or person authorized or designated by a public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

Local 2081-A has the same constitution and bylaws and the same officers as Local 2081. Local 2081-A has a representative on the Executive Board of Local 2081. The undersigned determines that

<sup>6/</sup> The City further disputes the status of Local 2081-A as a public employee representative within the meaning of the Act.



Local 2081-A is an employee organization, is a branch or affiliate of Local 2081, and has close ties to Local 2081. Local 2081-A has filed an RO Petition with an accompanying showing of interest in which employees designate Local 2081-A as their representative. The undersigned concludes that Local 2081-A is an employee representative within the meaning of the Act.

The undersigned observes that the Act does not preclude non-firefighting employees from choosing a firefighters' organization, or an affiliate thereof, as their representative, nor does the Act preclude a firefighting organization, or an affiliate thereof, from becoming the exclusive representative of such employees in an appropriate unit. The City has not advanced a compelling reason to require otherwise. Accordingly, there is no statutory or other proscription of the representation of a separate unit of non-firefighters by a firefighters' organization or an affiliate thereof.

The City claims that there is a conflict of interest between Local 2081 and CETA employees, based upon an alleged letter from the Local 2081 President, which allegedly indicated "hostility" toward CETA employees. The undersigned, in previous decisions, has distinguished between a "conflict of interest," as that concept is defined in Borough of East Orange Board of Education v. Wilton, 57 N.J. 404 (1971), and the "competing interests" among various groupings of employees as to terms and conditions of employment. See In re Mercer County Prosecutor, D.R. No. 79-18, 5 NJPER 60 (¶ 10039 1979); In re Long Branch Board of Education,

D.R. No. 78-24, 3 NJPER 392 (1977). The undersigned rejects the City's claim, in either context, as there are simply no record facts to support it. The Commission cannot presume that an employee representative, if chosen the exclusive representative, will fail to meet its statutory obligation to fairly represent employees. See, AFSCME v. P.E.R.C., CSA, SEA, Docket No. A-986-72 (App. Div. February 27, 1973) (unpublished).

Additionally, the undersigned rejects the City's assertion that the RO Petition is untimely filed due to the City's contract with Local 2081 in the firefighters' unit. The RO Petition filed by Local 2081-A seeks certification of Local 2081-A as the exclusive negotiations representative of allegedly unrepresented non-firefighting employees in a separate collective negotiations unit. The contract covering employees in the firefighting unit does not bar this Petition. Accordingly, there is no contract or other timeliness bar to the instant Petition, unless it is found that petitioned-for employees, who would appropriately be included in the proposed unit, are represented by Council No. 5, and that a valid contract exists with Council No. 5 which would act as a bar.

There are 17 individuals currently employed in the City's Emergency Medical Program:

1	civilian EMT (CETA)
12	civilian paramedics (8 CETA, 1 non-CETA, 3 status unspecified)
4	paramedics/UFD
0	EMT/UEDE

The City maintains that CETA employees are not employees within

the meaning of the New Jersey Employer-Employee Relations Act and thus have no representation rights under the Act. Accordingly, the City excepted to the Hearing Officer's inclusion of CETA paramedics and CETA EMTs in a negotiations unit.

The undersigned has addressed the issue of the rights and status of CETA employees in several prior decisions. <sup>7/</sup> The facts in the instant matter do not appear to materially differ from those in the prior decisions concerning CETA employees.

The hiring process for CETA employees herein, while somewhat different from that of the non-CETA employees, is substantially controlled by the employer. The record shows that the CETA administration generally does pre-hire screening of candidates and then sends them to the City for the final hiring decision. As it was somewhat difficult to locate suitable candidates for the paramedic and EMT positions, the City used other sources in addition to the CETA administration to secure potential candidates for the available positions. The CETA paramedics and CETA EMTs are stationed in the City firehouse. The City provides direction and supervision for these employees in their delivery of emergency medical services to the community -- in the field, these employees are supervised by more highly qualified medical

7/ See In re Township of Dover, E.D. No. 63 (1975); In re Passaic Cty. Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶ 4006 1977); In re County of Middlesex, D.R. No. 78-48, 4 NJPER 242 (¶ 4122 1978); In re County of Hudson, D.R. No. 79-3, 4 NJPER 294 (¶ 4147 1978); In re Township of Mine Hill, D.R. No. 79-4 4 NJPER 297 (¶ 4148 1978) request for review den., P.E.R.C. No. 79-8, 4 NJPER 416 (¶ 4186 1978); In re County of Somerset, D.R. No. 79-9, 4 NJPER 397 (¶ 4179 1978).

personnel (doctors, nurses and other hospital personnel); in the firehouse, they are supervised by superior officers of the fire department. Departmental rules apply to the civilian CETA employees where the circumstances warrant. The City may, where warranted, mete out discipline to these civilian employees. The City sets their work schedule -- the days and hours of employment. The City determined the initial level of compensation and fringe benefits for the positions of paramedic/UFD and EMT/UFD, as well as the compensation and fringe benefits for civilian paramedics and civilian EMTs. The paramedic/UFD and EMT/UFD positions were compensated in a manner similar to firefighters; the civilian paramedic and civilian EMT positions were compensated in a manner more consistent with employees in the Council No. 5 unit.

Thus, it appears that in large measure the City effectively controls the hire, discharge, discipline, supervision, direction and compensation of the CETA employees who are "employed" by the City, subject to and within the restrictions imposed by the CETA legislation and the United States Department of Labor rules and regulations enacted pursuant thereto. In In re Passaic County Board of Chosen Freeholders, supra, n.7, the undersigned concluded that CETA personnel:

have a sufficient regularity in their employment relationship to be entitled to the protections of the Act and the right to negotiate with their employer as to their terms and conditions of employment, subject to any restrictions that the federal legislation imposes upon the employment relationship.

In In re County of Hudson, supra, n.7, the undersigned addressed the County's concern that CETA employees were employed under a financial grant which was for a term certain. The undersigned observed:

It is the judgment of the undersigned that the fact that these CETA employees are currently employed under a CETA grant for only ten months as contrasted to the CETA employees in the Passaic County matter whose CETA employment was indefinite does not present a distinction which would warrant a change in the Commission's enunciated policy. The ten month period of guaranteed employment continues to qualify these CETA personnel as public employees...

Finally, in In re County of Somerset, supra, n.7, the undersigned stated:

The continued employment for such personnel, in the absence of or in lieu of CETA funding, is dependent upon the ability of the County to substitute its own funding and its desire to offer continued employment.

The undersigned, in studying and analyzing the record, including the exceptions and the brief in support thereof, has determined that no factual or legal arguments have been advanced by the City to warrant a conclusion different from the Commission's determinations in the cases cited. Accordingly, pursuant to the foregoing findings and discussion, the undersigned determines that the CETA employees herein are public employees within the meaning of the Act, that the City substantially controls labor relations

affecting these employees and, thus, that the City is the employer of the CETA personnel employed pursuant to this federally funded program.

Next, the undersigned turns to the appropriate unit placement for the titles at issue herein.

#### Paramedic and EMT Titles

The Hearing Officer found appropriate a unit comprised of civilian paramedics and civilian EMTs. The City excepted. There are four titles in the instant matter -- paramedic/UFD, civilian paramedic, EMT/UFD, civilian EMT -- which, taken as a whole, all perform work of a similar nature: they render emergency medical services to the community -- the paramedics rendering medical services of a somewhat more sensitive and highly technical nature than do the EMTs. The record reveals no functional differences between paramedics/UFD and civilian paramedics and no functional differences between EMTs/UFD and civilian EMTs. <sup>8/</sup> The training for the paramedic and EMT positions is the same for the paramedics/UFD and EMTs/UFD as it is for their civilian "brethren." Both groups -- paramedics/UFD and EMTs/UFD; civilian paramedics

8/ The undersigned notes that while a difference in job descriptions exists -- both the paramedic/UFD and EMT/UFD job descriptions contain the duties and responsibilities of a firefighter in addition to those of a paramedic or EMT -- the record indicates that the actual day-to-day duties and tasks performed by paramedics/UFD and EMTs/UFD do not differ from tasks performed by the civilian paramedics and civilian EMTs.

and civilian EMTs -- receive supervision and direction in the field from more highly qualified medical personnel when available. Where more highly skilled personnel are not available, the paramedic squad leader gives technical supervision. When stationed in the firehouse, both groups take direction from the fire department captain or higher ranking personnel on duty. Both groups are subject to fire department rules. The paramedic/UFD and EMT/UFD group and the civilian paramedic and civilian EMT group share many other common terms of employment. There are no differences in their work schedules based upon a UFD/civilian distinction. They have the same working conditions, operate the same equipment and receive a clothing allowance.

While there are different hiring practices for the UFD positions, different compensation and fringe benefits and different promotional opportunities, in consideration of all the foregoing, the undersigned concludes that a substantial community of interest is shared by the paramedics/UFD and EMTs/UFD and the civilian paramedics and civilian EMTs -- largely because the UFD and civilian positions perform identical functions. This substantial community of interest may be contrasted with several important differences observed between firefighters and the paramedics/UFD and EMTs/UFD. While both the firefighters and the paramedics/UFD and EMTs/UFD have received training as firefighters, the latter group received further training in emergency medical service work. The two groups perform widely differing jobs. Firefighters perform firefighting functions. Paramedics/UFD and EMTs/UFD, as indicated above, render

emergency medical services. Working conditions for the two groups differ. There are differing lines of supervision in the firehouse and completely different supervision in the field. Firefighters have a different work schedule than do the paramedics/UFD and EMTs/UFD and the firefighters use different equipment in performing their tasks.

While paramedics/UFD and EMTs/UFD are certified as firefighters, they are performing a completely different and separate function, their certification notwithstanding. The record reveals that there has been no interchangeability of job functions between the firefighters and the paramedics/UFD and EMTs/UFD, except for infrequent situations where firefighters have been assigned to drive the emergency medical vehicle due to a short-staffed paramedic/EMT shift. Of great significance is the fact that the paramedic/UFD and EMT/UFD employees, since their classification as such, have not performed firefighting duties. In effect their firefighter certification lies dormant. Thus, although certified as firefighters, the paramedics/UFD and EMTs/UFD do not perform firefighter tasks and in fact perform tasks substantially different from firefighting. Under these circumstances, certification as a firefighter is not a compelling factor in determining appropriate unit placement.

The inclusion in the firefighters' unit of paramedics/UFD and EMTs/UFD, who have been determined as not performing firefighting activities, would have the effect of negating the public policy of



this State as expressed in N.J.S.A. 34:13A-14 et seq. <sup>9/</sup>

Chapter 85 states: <sup>10/</sup>

1. It is the public policy of this State that in public fire and police departments, where public employees do not enjoy the right to strike, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

2. "Public fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively comprised of firefighting employees.

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Therefore, it appears that the inclusion of non-firefighting personnel in a unit with firefighters would disqualify such units from coverage under Chapter 85 and would deprive the firefighting personnel, the public employer and the public of the "alternate, expeditious, effective and binding procedure for the resolution of disputes" provided by Chapter 85.

Given the substantial community of interest extant between the paramedics and EMTs -- both UFD and civilian -- the undersigned determines that the appropriate unit for collective negotiations would be one including paramedics/UFD, EMTs/UFD, civilian paramedics and civilian EMTs.

<sup>9/</sup> New Jersey Employer-Employee Relations Act, as amended, c.85 L.1977; N.J.S.A. 34:13A-14 through N.J.S.A. 34:13A-21 ("Chapter 85")

<sup>10/</sup> N.J.S.A. 34:13A-14 and 15

Mechanic and Repairer Titles

Local 2081-A seeks to include in its proposed unit the titles of fire department mechanic and fire signal repairer in addition to the civilian paramedic and civilian EMT titles discussed above. The City, in opposition, contends that the mechanics and repairer are included in the Department of Public Works blue collar unit represented by Council No. 5 and do not share a sufficient community of interest with the civilian paramedics and civilian EMTs to be included in a unit with them. The Hearing Officer recommended the exclusion of the mechanics and repairer from the unit proposed by Local 2081-A. None of the parties has filed exceptions to this recommendation. The undersigned adopts the Hearing Officer's finding that the repairer is included in Council No. 5's unit. In addition, the undersigned adopts the Hearing Officer's finding that all mechanics are part of the Department of Public Works and may be assigned to work in other garages such as police and fire. Likewise, the undersigned adopts the Hearing Officer's finding that the mechanics' benefits are consistent with the provisions of Council No. 5's contract. Therefore, the undersigned concludes that the most appropriate unit placement for the repairer and mechanics is in the Council No. 5 collective negotiations unit. Accordingly, the unit petitioned for by Local 2081-A is found to be inappropriate inasmuch as it proposes to include one title (repairer) currently in the Council No. 5 unit, and fails to include two titles (paramedic/UFD and EMT/UFD) which

most appropriately belong in the same unit with civilian paramedics and civilian EMTs. Based on the findings enumerated above, the undersigned determines that the appropriate unit is a unit of emergency medical service personnel assigned to the fire department, including the following titles: paramedic/UFD, EMT/UFD, civilian paramedic and civilian EMT; but excluding fire department mechanic, repairer, firefighters, confidential employees, managerial executives, police employees, professional employees, craft employees, and supervisors within the meaning of the Act. 11/

Department Clerk Title

Local 2081, in its CU Petition, seeks to clarify the status of the Department clerk. The Hearing Officer recommended that the Department clerk should be included in the firefighters' unit represented by Local 2081. The City excepted, claiming that the agreement between the City and Local 2081 specifically excludes clericals, the Department clerk performs clerical functions, and inasmuch as Local 2081 failed to seek the Department clerk's

11/ The City also has raised a timeliness question concerning the RO Petition, contending that the Council No. 5 contract applied to several of the titles petitioned for by Local 2081-A. From the record, the undersigned concludes that these titles appear appropriate for inclusion in the Council No. 5 Department of Public Works unit and further, that at least the repairer title has historically been included therein. The record is unclear concerning the previous representation status of the fire mechanic title. Having found that the unit petitioned for by Local 2081-A is clearly appropriate, and since Local 2081-A's petition is dismissable on such grounds, the undersigned need not make a determination concerning the timeliness question raised by the City.

inclusion in the unit for a number of years after the creation of the firefighters' unit, Local 2081 has abandoned any right to include the Department clerk in its unit.

The Department clerk was identified as a firefighter by Chief Jones. The "official" City title for this position is "Chief Chauffeur." The employee holding this title has worked as the Department clerk for at least seven years.

When in headquarters, the Department clerk performs clerical duties. In fact, most of his duties are of a clerical nature. Working conditions for the Department clerk are necessarily different from those of firefighters.

While the Department clerk is identified as a firefighter, the evidence does not indicate that he is engaged in firefighting duties. An employee's certification in a particular job title or employment in a position with a particular job description is not a compelling factor in a determination concerning unit placement where the record evidence indicates that actual job performance bears little or no resemblance to the underlying certification or job description.

The undersigned notes that the recognition clause of the current agreement between the City and Local 2081 <sup>12/</sup> specifically excludes office clerical employees from the firefighters' unit. Accordingly, based on the factors enumerated above, the

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<sup>12/</sup> Supra, n.4.

undersigned determines that the Department clerk is excluded from the firefighters' unit. 13/

### Fire Inspector Title

The Hearing Officer recommended that the firefighter unit be clarified to include fire inspectors. The City argues that Local 2081 waived its right to include the fire inspector position in its unit inasmuch as the Fire Prevention Bureau has existed for over 25 years, thus predating the formation of the firefighter unit, and inasmuch as Local 2081 has negotiated several contracts which have not included fire inspectors assigned to the Bureau. The City also contends that the fire inspectors lack the requisite community of interest necessary for their inclusion in the same negotiations unit with firefighters. For the reasons stated below, the undersigned rejects the position of the City and adopts the recommendations of the Hearing Officer.

The Fire Prevention Bureau is currently staffed by two lieutenants (certified uniformed fire officers) and three firefighters (certified uniformed firefighters, hereinafter "fire inspectors"). The fire inspectors receive the same base pay and fringe benefits as do the firefighters. However, the fire inspectors get a larger clothing allowance and receive a "stipend" in addition to a firefighter's base pay. The fire inspectors have the same

13/ Having found that the Department clerk is excluded from the firefighters' unit based upon the unit definition, the undersigned need not consider the employer's alternate arguments.

promotional opportunities as are available to the firefighters. Their training is similar -- all fire inspectors have, at least, been trained as firefighters; some fire inspectors have received various kinds of additional training. <sup>14/</sup> Schedules of work for these two groups are different in that firefighters work a full shift schedule while the fire inspectors work regular day shifts. The Bureau has always been staffed solely by firefighters. Appointment to the Fire Prevention Bureau is by decision of the Chief with the approval of the City Manager. The record reveals that a regular practice has developed in the fire department wherein temporarily disabled firefighters are assigned to the Bureau. The record also establishes that permanently disabled firefighters may be assigned to the Bureau. In addition, it appears that assignment to the Fire Prevention Bureau is not necessarily permanent inasmuch as fire inspectors may be returned to line firefighting duties.

Working conditions, while not specifically identical, are generally similar in that both firefighters and fire inspectors are engaged in different aspects of firefighting. The fire inspectors perform various tasks including inspections, issuance of

14/ There is no indication in the record that there is a prescribed minimum additional training requirement for the fire inspectors in the Fire Prevention Bureau. Nor is there any indication that employees in the Bureau must hold a special certification. The Chief testified that these employees attend various schools, within budgetary limitations, with the goal of eventually obtaining one of the various types of available certifications.

licenses and permits, and conduct arson investigations.

The parties, in their negotiated agreement covering 1974-1976, in effect when the instant CU Petition was filed, recognize fire inspection as part of firefighting responsibilities. Article XXVI of that agreement, entitled "Duties," states: 15/

26.1 The duties of a fireman are as follows: During an assigned tour of duty, answers fire alarms and assists in extinguishing fires: performs the necessary tasks involved in the cleaning and maintaining of fire equipment, apparatus and building; does related work as required and such other duties as permitted by Civil Service Law....

26.2 A. Firemen may be assigned to regular public safety fire and safety patrol which would include, but not by way of limitation, the following:

1. Fire Prevention Investigations
2. Smoke Investigations
3. Fire Zone Violations
4. Elevator Calls
5. Sprinkler Alarm Calls
6. Bomb Investigations
7. Public Building Inspection, (Movie Theatres and similar establishments)
8. Answer all Fire Calls in Designated Areas
9. Hazards of other types to be reported: D.P.W., Police, Building, and Health.
10. Ambulance

\* \* \*

Thus, the duties of a firefighter, as envisioned by the parties' agreement, encompass more than answering fire calls and

15/ In the most recent agreement all references to "firemen" contained in the previous agreement are changed to "firefighters." Otherwise, Article XXVI appears in identical form in both agreements.

assisting in extinguishing fires. Firefighters may be called upon to perform, inter alia, fire prevention investigations, fire zone violation patrol or building inspections -- tasks described in the record as being performed by fire inspectors.

Tasks associated with fire prevention -- various inspections, investigations, etc. -- are elements of the broad process of firefighting. The Department of Civil Service, on March 22, 1976, stated to Local 2081: "Please be advised that it is the policy of this Department to consider the duties performed in the Fire Prevention Bureau by members of the firefighting staff to be an assignment within the Fire Department not requiring a change in title classification." (Exhibit P-1)

The recognition clauses of the parties' agreements include " ... all firemen [firefighters] employed by the City...." The undersigned notes that the recognition clauses of the agreements between the City and Local 2081 not only do not exclude fire inspectors from the firefighters' unit but, in fact, Paragraph 26 of the contracts defines a firefighter duty as encompassing fire inspection. <sup>16/</sup> The parties' failure to specifically negotiate

16/ The Chief's testimony reveals that, while assigned to the Fire Prevention Bureau, a certain lieutenant served as president of the Association exclusively representing all fire department superior officers. When questioned by Local 2081's counsel as to why the lieutenants in the Bureau were included in the regular superior officers unit and yet, in the City's judgment, the firefighters in the Bureau should not be included in the uniformed firefighters' unit, the Chief's testimony was vague and unresponsive.



concerning the additional stipend paid to the fire inspectors and the greater clothing allowance provided for them is not dispositive of the question of unit placement. Based upon the above, the undersigned cannot accept the position of the employer that there has been a waiver by Local 2081 of the representation of fire inspectors.

The instant Clarification Petition does not seek to add new titles or new functions to an existing unit; nor does it seek to add existing titles to a unit from which said titles had previously been excluded. Rather, the undersigned views the question raised by the CU Petition as purely a matter of identification -- i.e., whether the titles are encompassed within the inclusionary or exclusionary language of the unit description as contained in the parties' negotiated agreement. Under such circumstances, the clarification of unit petition may be filed at any time and the determination will be effective immediately. 17/

Based upon the foregoing discussion, the undersigned concludes that the fire inspectors perform firefighting functions, that they share a community of interest with the uniformed firefighters and, most importantly, that the parties' agreements contemplated the inclusion in the negotiations unit of employees performing the duties performed by the fire inspectors.

Accordingly, the undersigned determines that the firefighters' negotiations unit represented by Local 2081 is clarified as including fire inspectors.

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17/ In re Clearview Regional High School Board of Education,  
D.R. No. 78-2, 3 NJPER 248 (1977).

Petition for Certification of Representative  
filed by Local 2081-A

Based upon the foregoing, the undersigned concludes that the most appropriate unit for collective negotiations is one including all paramedics and EMTs employed by the City (including CETA employees) -- i.e., all paramedics/UFD, all civilian paramedics, all EMTs/UFD and all civilian EMTs; and excluding the fire mechanics, the signal repairer, managerial executives, confidential employees, police employees, supervisors within the meaning of the Act and all other employees. Thus, the undersigned determines that the unit petitioned for by Local 2081-A is inappropriate and substantially different from the unit determined to be the most appropriate unit herein. Accordingly, the Petition is hereby dismissed. 18/

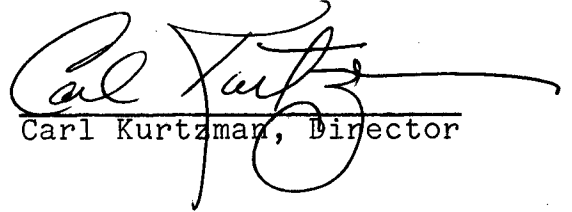
Petition for Clarification of Unit  
filed by Local 2081

Based upon the foregoing, the undersigned hereby clarifies the firefighters' unit represented by Local 2081 to include all fire inspectors, i.e., all certified uniformed firefighters

18/ Should Petitioner Local 2081-A or any other employee representative desire to represent employees in the appropriate collective negotiations unit as set forth above, the undersigned notes that a petition may be filed for such unit at any time inasmuch as these employees are all currently unrepresented and the unit sought would be a new collective negotiations unit.

serving in the Fire Prevention Bureau. Finally, the undersigned determines that the Department clerk is excluded from the fire-fighters' unit.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Carl Kurtzman, Director

DATED: March 27, 1979  
Trenton, New Jersey

STATE OF NEW JERSEY  
BEFORE A HEARING OFFICER OF  
THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HACKENSACK,

Respondent,

-and-

Docket No. CU-77-4

LOCAL 2081, HACKENSACK FIRE  
FIGHTERS, IAFF, AFL-CIO,

Petitioner.

-----  
CITY OF HACKENSACK,

Respondent,

-and-

Docket No. RO-78-40

LOCAL 2081A, HACKENSACK FIRE  
FIGHTERS, IAFF, AFL-CIO,

Petitioner.

SYNOPSIS

A Commission Hearing Officer finds that uniform firefighters serving in an emergency medical program most appropriately should remain in the fire fighter negotiations unit primarily because of the Police-Fire arbitration legislation. Also to remain in the fire fighter unit are Fire Prevention Inspectors and the Department Clerk.

The Hearing Officer also finds appropriate a new unit of civilians in the emergency medical program including those who are CETA employees. No merit is attached to the employer's argument that a fire fighter local cannot represent a civilian unit, and it is recommended that an election be conducted.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

STATE OF NEW JERSEY  
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FIGHTERS, IAFF, AFL-CIO,

Petitioner.

Appearances:

For the City of Hackensack, Murray, Granello  
& Kenney, Esqs. (James P. Granello, of Counsel)

For the Hackensack Fire Fighters, Schneider,  
Cohen & Solomon, Esqs. (David Solomon, of Counsel)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On July 28, 1976 a Petition for Clarification of Unit ("CU") was filed with the Public Employment Relations Commission (the "Commission") by Local 2081, Hackensack Fire Fighters, IAFF, AFL-CIO ("Local 2081") seeking clarification of the composition of a unit of employees of the City of Hackensack (the "City"). On September 9, 1977, a petition was filed with the Commission by Local 2081A, Hackensack Fire Fighters, IAFF, AFL-CIO ("Local 2081A")

seeking certification as exclusive negotiations representative of a unit of employees of the City ("RO"), and these two cases were consolidated by an Order dated October 24, 1977 on which date a Notice of Hearing was issued. A hearing was held before the undersigned Commission Hearing Officer on December 8, 1977 and March 29, 1978 in Newark at which all parties had the opportunity to examine and cross-examine witnesses, present evidence and argue orally. A brief was filed by the City on May 22, 1978, but after obtaining an extension of time to June 1978 in which to submit a brief, Locals 2081 and 2081A did not make a submission.

It is uncontested that Local 2081 represents a unit described in contract recognition clauses as "all Fire Fighters employed by the City excluding craft employees, police officers, office clericals, fire superiors, supervisors within the meaning of the Act, managerial executives, officers and all others." The CU petition sought a determination as to whether uniform fire fighters serving as either Emergency Medical Technician ("EMT") or Paramedic are included in Local 2081's unit as well as fire fighters serving in the Fire Prevention Bureau or as Fire Department Clerk.<sup>1/</sup> In the RO, Local 2081A seeks to represent a unit of civilian paramedics and EMTs, the fire mechanics, and the fire alarm electrician - also known as the fire signal repairman.

<sup>1/</sup> Initially it also sought inclusion of fire mechanics, but that position, subsequent to filing of the petition, became a civilian job and Local 2081 no longer seeks inclusion of that title.

The City presented a number of objections to both petitions. It is asserted that fire fighters now performing as paramedics or EMTs have only secondary roles as fire fighters and no longer have a community of interest with those whose primary duty is to actually fight fires. Furthermore, all but one of the civilians in the paramedic program are employed with the federal Comprehensive Employment and Training Act ("CETA") and it is the City's position that they are not public employees within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). The fire mechanics and the signal repairman are claimed to be part of the unit of blue-collar employees represented by Council #5, New Jersey Civil Service Association ("Council #5"), and the remaining employees at issue - fire prevention bureau, personnel and the department clerk - are said not to have a community of interest with line fire fighters.

Upon the entire record herein the Hearing Officer finds:

1. The City is a public employer within the meaning of the Act and is subject to its provisions.
2. Locals 2081 and 2081A are employee organizations within the meaning of the Act and are subject to its provisions.
3. Petitions for Clarification of Unit and Certification of Public Employee Representative having been filed with the Commission and there being a dispute as to the proper unit placement of the employees at issue, these consolidated matters are properly before the Hearing Officer for a Report and Recommendation.

The City of Hackensack established its paramedic program pursuant to N.J.S.A. 26:2K-1 et seq. Initially the personnel was found by soliciting volunteers from the fire fighter ranks, later to be augmented by civilians. The EMT position requires training in an ambulance program while a paramedic must have completed a State accredited 480 hour Mobile Intensive Care Paramedic Program. Not only fires but other emergencies such as coronary cases may require their services. These uniform fire fighters serving in these positions [EMT/UFD and Paramedic/UFD] are qualified to perform regular fire fighting duties albeit they are not primarily intended to do so. A Department of Civil Service audit for these positions revealed that these titles should be considered a promotion in the sense of being more responsible - the incumbents are qualified to perform more functions than those in the fire fighter title.

These quasi-medical employees are subject to a dual chain of command - at the fire station they take orders from officers just like everyone else but in performance of medical duties defer to the senior member of the team or to hospital personnel that might be present. Uniformed paramedics and EMTs get basically the same benefits as before except for an extra clothing allowance, but their shifts are somewhat different from those of the other uniformed people.

The status of these uniformed employees serving in the emergency medical program is a quite difficult situation inasmuch



as they have a distinct hybrid existence having certain things in common with their fire fighter brethren yet being distinct in many vital respects. However, the undersigned believes that the deciding factor is one apart from the particular facts as they exist in Hackensack. Our legislature recently enacted a statute providing for binding arbitration to resolve contract impasses for police and fire fighting units in New Jersey.<sup>2/</sup> Included is the following definition:

"Public Fire department" means any department of a municipality, county, fire district or the State or any agency thereof having employees engaged in firefighting provided that such firefighting employees are included in a negotiating unit exclusively composed of firefighting employees.

In the undersigned's estimation the above definition expresses a legislative concern that the public employees who may engage in firefighting (as well as police) shall have their disputes resolved by a binding mechanism not to be available to other public employees. The uniformed people at issue herein remain potential firefighters to whom the Hearing Officer believes the legislature would want this benefit to extend. Yet should they be removed from the firefighting unit and placed into a paramedical unit with civilians - who may not fight fires - the legislation would on its face appear to mandate their exclusion from its coverage.

<sup>2/</sup> c. 85, P.L. 1977.

Despite the City's characterization of the CU petition as an attempt to accrete employees into Local 2081's unit, the Hearing Officer views it differently. The UFD paramedical employees all were in the unit as fire fighters and the question is whether they must be removed due to their "promotion" to Paramedic/UFD or EMT/UFD. Given the legislative intent of Chapter 85, the conclusion reached herein is that the purposes of the Act are best effectuated by having all qualified fire fighters - other than superior officers - in one unit. This is buttressed by the New Jersey Supreme Court's admonition in State v. Professional Association of New Jersey Department of Education, 64 N.J. 231 (1974) to avoid undue fragmentation.

Also at issue are the employees who are Fire Prevention Inspectors. These are all uniform personnel, some being lieutenants and the others fire fighters. Only the non-officers are claimed by Local 2081 to be part of its unit. Their duties include inspection and the issuing of licenses and permits, and their benefits differ only in a larger clothing allowance and a \$500 addition to base fire fighter salary. All of the inspectors are disabled fire officers or fire fighters. They work regular day shifts and have been certified under State law. Again, as in the paramedic/UFD situation, there are a number of differences from the line fire fighters, but the Hearing Officer believes that the non-officer inspectors should be in the fire fighter unit. Their function is another aspect of fire prevention - keeping fires

from happening - which is a necessary corollary to actually putting out fires. There is nothing in the record that would indicate any conflict with the fire fighters, in fact quite the contrary would be suggested by the fact that the inspectors are former comrades who have been disabled.<sup>3/</sup>

The final uniformed employee at issue is a fire fighter serving as Department Clerk performing clerical duties. While the recognition clause of Local 2081's contract excludes clericals, it is the undersigned's belief that it should be read to refer to civilian secretaries working with him. Being a fire fighter, this individual should be included, especially given this Commission's refusal to sanction one-man units. In re Borough of Jamesburg, D.U.P. No. 79-5, 4 NJPER \_\_\_\_\_ (¶ 1978).

While Local 2081 is not attempting to add civilian employees to its fire fighter unit, Local 2081A - an avowed offshoot - seeks certification as representative of a new unit to include the fire mechanics, the alarm electrician (or signal repairman) and the civilian EMTs and Paramedics. The City maintains that the mechanics and the repairman are part of Council #5's unit, and additionally denies the right of CETA employees to representation.

Council #5 President Agnita Hastings testified that the repairman is a part of her unit and this was not contested further.

<sup>3/</sup> It is further noted that Inspector Lt. Carucci was President of the Officers' Association. On this issue see Local 785, Lewiston Fire Fighters, Maine Com. Dept. Labor & Industry (Oct. 14, 1971); Milwaukee Fire Fighters Assn., WERB Dec. # 6476 (1963).

She also testified that the mechanics assigned to the Fire Department were not represented by Council #5. However, City Administrative Analyst Gordon Seick testified that all mechanics are part of the Department of Public Works ("DPW") and may then be assigned to work in other garages such as police and fire. Their benefits have been in accord with the Council #5 contract. Ms. Hastings' testimony is diluted by a letter in evidence from Council #5's attorney to the City Manager stating that the mechanics (as well as the repairman) would not be in Council #5's unit if they do not come within the ambit of DPW. As both Mr. Seick and Chief Jones testified that they do come within DPW, the undersigned does not find it appropriate for them to be in any new unit.<sup>4/</sup>

No argument has been presented as to why the civilian paramedics and EMTs could not have a unit except that all but one are CETA employees. In re Passaic County Bd. of Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶4006 1977) was a comprehensive statement by the Director of Representation setting forth the Commission's views on this issue. After reviewing the federal statute and the implementing regulations as well as noting decisions in other jurisdictions, the Director found that CETA personnel are employees within the meaning of the Act. That decision has been reaffirmed in the interim In re County of Hudson, D.R. No. 79-3, 4 NJPER 294 (¶4147 1978) and In re Twp. of Mine Hill, D.R. No. 79-4, 4 NJPER 297 (¶4148 1978).<sup>5/</sup>

<sup>4/</sup> On the record, Ms. Hastings declined to enter Council #5 as a party to present its position as to these people. Therefore, no formal decision as to their status vis-a-vis Council #5 is recommended.

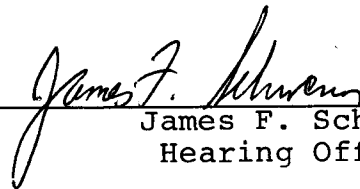
<sup>5/</sup> The City's position is inconsistent with its insistence that the mechanics and repairman belong in Council #5's unit, even though there are CETA employees among them.

A letter from Local 2081 President Sarapuchiello is cited by the City as evincing hostility toward CETA workers. A reading of the entire letter shows only that Local 2081 was miffed about not having negotiations before CETA people replaced fire fighters and does not establish cause for barring Local 2081A from the right to seek certification as the representative of a unit including CETA paramedics and EMTs. These civilians have a clear community of interest and form the most appropriate unit.

RECOMMENDATION

Based upon the entire record and for the foregoing reasons, it is recommended that Local 2081's unit be clarified to include Paramedic/UFD and EMT/UFD as well as the rank and file Fire Prevention Inspectors and the Department Clerk. It is further recommended that an election be ordered to determine whether civilians in the Paramedic and EMT titles wish to be represented for collective negotiations by Local 2081A.

Respectfully submitted,



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James F. Schwerin  
Hearing Officer

DATED: Trenton, New Jersey  
September 29, 1978