P.E.R.C. NO. 84-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Public Employer,

-and-

LOCAL 2772, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,

Docket No. RO-82-154

Petitioner,

-and-

DISTRICT 1199J, NATIONAL UNION HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Certification of Public Employee Representative which Local 2772, International Association of Firefighters filed. Local 2772 sought to represent a separate unit of the six institutional firefighters whom the County of Hudson employed at its Meadowview Hospital in Secaucus. Under all the circumstances of this case, the Commission held that it would be inappropriate to detach these employees from a successfully functioning broad-based unit of the County's non-supervisory blue and white collar employees.

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DISTRICT 1199J, NATIONAL UNION HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO,

Intervenor.

Appearances:
For the Public Employer
Murray & Granello, Esqs.

For the Petitioner, William Bowes, Vice-President

For the Intervenor, Greenberg, Margolis, Ziegler & Schwartz, Esqs.
(Mark S. Tabenkin, of Counsel)

DECISION AND ORDER

On April 7, 1982, Local 2772, International Association of Firefighters ("Local 2772") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. Local 2772 sought to represent a negotiations unit of the institutional firefighters, fire captains, assistant fire chiefs, and fire chiefs whom the County of Hudson ("County") employed at Meadowview Hospital in Secaucus. The petition listed Local Union No. 286, International Brotherhood

of Teamsters ("Teamsters") as the majority representative of those employees as part of an overall unit of non-supervisory blue and white collar County employees.

In statements of position, Local 2772 asserted that Meadowview Hospital firefighters should be removed from the overall unit of County employees because they were allegedly firefighters who were entitled to interest arbitration under N.J.S.A. 34:13A-14 et seq.

In its statement of position, the County requested that the petition be dismissed. It specifically asserted that the requested unit was inappropriate because: (1) the employees in question were not firefighters within the meaning of N.J.S.A. 34:13A-14 et seq. and were thus not entitled to interest arbitration; (2) N.J.S.A. 34:13A-14 et seq. contemplated that mixed units of firefighters and nonfirefighters predating the passage of the interest arbitration statute would continue to be appropriate; and (3) there was no evidence of instability or inadequate representation justifying severance of these employees from the overall unit.

On July 29, 1982, following a representation election in the overall unit of County employees, the Director of Representation certified District 1199J, National Union of Hospital and Health Care Employees, AFL-CIO ("District 1199J") as the new majority representative of that unit. The Teamsters had represented that unit since July 1, 1972.

District 1199J then intervened in this litigation. It takes the same positions as the County.

On September 20, 1982, the Director of Representation issued a Notice of Hearing. On November 9, 1982, Hearing Officer Arnold H. Zudick conducted a hearing.[1/] The parties examined witnesses, presented exhibits, and filed post-hearing briefs.

On March 8, 1983, the Hearing Officer issued his report and recommendations. H.O. No. 83-9, 9 NJPER 195 (¶14090 1983). He found that the employees in question were firefighters within the meaning of the interest arbitration statute, but concluded that that fact alone, in the absence of evidence of unstable or inadequate representation and in the presence of a long and successful negotiations history including these employees in an overall unit, did not warrant their severance from the overall unit of County employees. Accordingly, he recommended dismissal of the petition.

On March 21, 1983, Local 2772 filed exceptions. It reasserts that the interest arbitration statute entitles these employees to representation in a separate unit and argues that District 1199J is not an adequate representative of the interests of these employees.

1/ At the hearing, Local 2772 amended its petition to delete the fire chief and assistant fire chief titles. Local 2772 did not delete the captain title from its petition, although there was no testimony concerning that position since it was not filled at that time. The hearing thus focussed on the institutional firefighter position; there were six such employees at the time of the hearing. In addition, the parties stipulated that the adequacy or fairness of District 1199J's representation of these employees was not an issue.

On April 15, 1983, the County filed a response. It reasserts its position concerning the continued appropriateness of pre-existing mixed units of firefighters and non-firefighters under the interest arbitration statute and argues that Local 2772 waived its argument concerning District 1199J's alleged inadequate representation by stipulating at the hearing that such alleged representation was not an issue.[2/]

Pursuant to N.J.A.C. 19:11-8.6, the Commission has transferred this case to itself for appropriate action.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 4-7) are accurate. We adopt and incorporate them here. We add the following facts.

At the time of the July, 1982 representation election, there were approximately 1542 employees in the overall unit of County employees.[3/] At the time of the November, 1982 hearing, there were approximately 660-670 employees at Meadowview Hospital. District 1199J represents about three-quarters of these employees, including the six institutional firefighters.

As the Hearing Officer noted, William Bowes described three fires to which he responded: January 1, 1980, July 15, 1982, and July 23, 1982. Two institutional firefighters accompanied him to the first fire, but he responded alone to the last two fires because the County had by then reduced the number of

2/ The New Jersey State FMBA has filed an amicus curiae brief in support of Local 2772's request for a separate unit.
3/ We take administrative notice of the tally of ballots from the July, 1982 election we supervised.

institutional firefighters on a shift to one. The Chief reprimanded him for attempting to put out the last two fires without calling in the Secaucus Fire Department. Bowes conceded that he is not now authorized to put out mattress or locker fires by himself and must call in the Secaucus Fire Department, that it is an improper and unsafe procedure to respond to a fire alone, and that he took it upon himself to attempt to put out the second and third fires.[4/]

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), entrusts this Commission with the responsibility of supervising the voluntary mediation of public sector employer-employee disputes towards the end of achieving labor stability. N.J.S.A. 34:13A-2. Subsection 6(d) specifically empowers the Commission to resolve questions concerning representation of public employees by conducting a secret ballot election or using any other appropriate method designed to ascertain the free choice of the employees. When a question concerning representation arises, the Commission must decide in each instance which unit of employees is the appropriate unit for collective negotiations. In re State of New Jersey, P.E.R.C. No. 68 (1972), aff'd State of New Jersey and Professional Association of New Jersey Dept. of Education, 64 N.J. 231 (1974) ("Professional Association").

4/ The fires described in the record consist mostly of small mattress, locker, and related fires apparently set by mentally ill patients in their dormitories.

Pursuant to N.J.S.A. 34:13A-5.3, the Commission shall define the appropriate unit with due regard for the community of interest among the concerned employees. A community of interest determination encompasses a multitude of factors. In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶12229 1981) ("Englewood"); In re State of New Jersey, P.E.R.C. No. 68 (1972); In re Board of Education of West Milford, P.E.R.C. No. 56 (1971).

This Commission has long expressed, and the New Jersey Supreme Court early endorsed, a strong preference for broad-based units and a concomitantly strong distaste for an undue fragmentation of public sector negotiations units. Professional Association. We have also made clear that a long and productive history of negotiations in a particular broad-based unit weighs especially heavily in favor of not narrowing the composition of that unit. Thus, in In re Jefferson Twp. Bd. of Ed., P.E.R.C. No. 61 (1971), we refused to sever bus drivers from an existing broad-based unit of the school board's professional and non-professional employees. We stated:

> The underlying question is a policy one: assuming without deciding that a community of interest exists for the unit sought, should that consideration prevail and be permitted to disturb the existing relationship in the absence of a showing that such relationship is unstable or that the incumbent organization has not provided responsible representation. We think not. To hold otherwise would leave every unit open to re-definition simply on a showing that one sub-category of employees enjoyed a community of interest among themselves. Such a course would predictably lead to continuous agitation and uncertainty, would run counter to the statutory objective and would, for that matter, ignore that the existing relationship may also demonstrate its own community of interest.

> Here we have a unit created by recognition, not demonstrated to be inappropriate, covered by two successive agreements, and represented by an organization not shown to have provided less than responsible representation. Under these circumstances, the Commission is not prepared to upset that relationship on a single premise that bus drivers enjoy a variety of common interests.

See also In re Ridgewood Bd. of Ed., P.E.R.C. No. 82-14, 7 NJPER 462 (¶12204 1981); compare In re Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶12061 1981) and In re Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516 (¶1229 1982) (long and productive negotiations history may support continuation of an existing unit, even though broader-based unit might otherwise be appropriate). Accordingly, it is this Commission's judgment that labor stability is generally best served by the continuation of broad-based and longstanding negotiations units in the absence of a specific statutory or caselaw directive to the contrary,[5/] or a specific showing of instability or irresponsible representation in that unit.

In the instant case, the six employees in question have been part of a broad-based, County-wide unit of approximately 1542 employees for over a decade. The record contains a series of successfully negotiated collective agreements and there is no

5/ See, e.g., N.J.S.A. 34:13A-6(d) precluding, except where dictated by established practice, prior agreement, or special circumstances, a mixed unit of supervisors and non-supervisors and N.J.S.A. 34:13A-5.3 barring police officers from joining an employee organization that admits other than police officers to membership. See also Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404.

record evidence that the broad-based unit is in any way unstable or that the institutional firefighters have received irresponsible representation. Indeed, Local 2772 stipulated at the hearing that District 1199J's representation was not inadequate or unfair.[6/] Accordingly, it is clear that under our traditional Professional Association and Jefferson Township standards, it would be inappropriate to sever these employees from a broad-based unit, thus unnecessarily fragmenting that unit and disturbing a proven stable relationship.

The limited question in this case is whether the interest arbitration statute, N.J.S.A. 34:13A-14 et seq, entitles these firefighters to be severed from the broad-based unit, despite the traditional factors favoring their continuation in that unit.[7/] A close review of the provisions of the interest arbitration statute and its legislative history is necessary to answer this question.

The provisions of the interest arbitration statute establish a procedure for resolving negotiations impasses between a public fire or police department and an exclusive representative concerning the terms and conditions of employment. That procedure includes mediation, fact-finding, and, if necessary, a terminal step of compulsory interest arbitration. N.J.S.A. 34:13A-14

6/ In its exceptions, Local 2772 has sought to undo the effect of this stipulation. We will not now consider Local 2772's arguments of inadequate representation since this argument contravenes its stipulation and is not based on any evidence of record.

7/ For purposes of the following analysis, we will assume, without deciding, that the Hearing Officer properly found that the employees in question were "engaged in firefighting" within the meaning of N.J.S.A. 34:13A-15.

states the public policy behind the interest arbitration statute:

> It is the public policy of the 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.

N.J.S.A. 34:13A-15 defines "public fire department" and "public police department," the two entities covered by the interest arbitration statute. A "public fire department" is:

> ...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 negotiations unit exclusively comprised of firefighting employees.
> (Emphasis supplied)

The bill (Senate Bill No. 482, 1976 Session) which ultimately became the interest arbitration statute did not contain the underlined proviso when introduced. When the Assembly Labor, Industry and Professions Committee studied this bill, it recommended the addition of the underlined proviso. The Committee's official statement accompanying its recommended changes stated, in part:

> ...The committee also approved amendments suggested by the Governor's Counsel's Office and Office of Employee Relations to...limit the benefits of the bill to those firefighters not in mixed negotiating units.

With the committee's recommended change, this definition of "public fire department" was the one ultimately included in Senate Bill No. 482 when passed by the Senate on November 8, 1976, passed by the Assembly on February 17, 1977, and signed by the Governor on May 10, 1977.

One attempt to amend Senate Bill No. 482 before the Governor signed it failed. Senate Bill No. 3172 would have amended the definition of "public fire department" to be:

> ...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 negotiations unit exclusively comprised of employees performing firefighting or related functions. (Emphasis supplied)

An accompanying statement articulated the sponsor's purpose:

> The purpose of this bill is to clarify the intent of pending legislation concerning the types of firefighting negotiating units whose "interest disputes" are subject to resolution by compulsory arbitration.
>
> Under this legislation the only units not covered for such purposes would be units of mixed titles wherein some employees perform functions wholly unrelated to firefighting and who are only coincidentally included in such units. Units with personnel such as dispatchers and linemen would, however, be covered.

This bill was sent to the Assembly Labor, Industry, and Professions Committee and never resurfaced.

Based on the proviso contained in N.J.S.A. 34:13A-15's definition of "public fire department;" the legislative history of that proviso, specifically the committee statement supporting

the proviso's adoption; and the rejection of Senate Bill No. 3172; we believe the Legislature recognized and intended that mixed units of firefighters and non-firefighters existing before the adoption of the interest arbitration statute could continue to be appropriate even though firefighters in such units might thus be disqualified from using the compulsory arbitration process. Thus, the mixed unit of non-firefighters and institutional firefighters before us now is not per se inappropriate simply because of the interest arbitration statute. See In re Essex County Hosp. Center, D.R. No. 83-2, 8 NJPER 460 (¶13216 1982).[8/]

While the interest arbitration statute, standing alone, does not automatically entitle firefighters to be severed from an existing mixed unit including non-firefighters, it is certainly a potent consideration in determining whether, under all the

8/ On this point, employees engaged in performing police services must be distinguished from employees engaged in firefighting. Absent an established practice, a prior agreement, or special circumstances, police officers may not appropriately be included in a unit containing non-police officers because of N.J.S.A. 34:13A-5.3's injunction that "...no policeman shall have the right to join an employee organization that admits employees other than police to membership." This statutory prohibition guards against an inherent conflict of interest between employees entrusted with law enforcement functions and other employees against whom they may be called upon to act. Compare Village of Skaneateles, 16 N.Y. PERB 3111 (¶3070 1983) (because of conflict of interest, separate unit of police officers should be established despite long history of meaningful and effective negotiations). By contrast, N.J.S.A. 34:13A-5.3 does not prevent firefighters from joining an organization admitting non-firefighters to membership and there is no conflict of interest between fire fighters and non-firefighters. See In re City of Hackensack, D.R. No. 79-27, 5 NJPER 150 (¶10085 1979).

circumstances, a separate unit should be formed in order to effectuate the overriding goal of labor stability. The public policy, N.J.S.A. 34:13A-14, behind the interest arbitration statute is that compulsory interest arbitration promotes labor stability and lessens the chance of a disruption of vital police and firefighting services by providing a peaceful and terminal channel for the resolution of employer-employee representative negotiations disputes. Given this public policy, it would be wrong in determining whether firefighters should be excluded from a mixed unit to limit our inquiry to traditional severance standards. Instead, we believe the Legislature's recognition that pre-existing mixed units of firefighters and non-firefighters may continue to be appropriate and its endorsement of compulsory interest arbitration as a means of ensuring labor stability may both be accommodated by establishing a presumption that firefighters should be severed from a mixed unit unless the record shows, under all the circumstances, that labor stability, as evidenced by a long history of successful negotiations and adequate representation, would be better served by their continued inclusion in that unit. Among the factors to be considered are the length and stability of the negotiations history concerning the mixed unit; the adequacy of representation and incidents of unfair representation affecting firefighters in that unit; the composition and community of interest of the mixed unit; and the nature of services rendered by the employees in question.9/

9/ Other factors may be identified case-by-case.

In the instant case, we are convinced, under all the circumstances in this record, that the institutional firefighters should not be severed from the existing unit. As we found in discussing the traditional severance standards, there is a long history of successful collective negotiations in the broad-based mixed unit and a complete absence of evidence of irresponsible representation. Furthermore, there is a readily apparent community of interest between the institutional firefighters and their other colleagues responding to patients' problems at Meadowview Hospital. In addition, the firefighting services provided by institutional firefighters are, at present, minimal because of the one employee per shift limitation. It appears from the discipline given Bowes that these institutional employees are not supposed to fight fires so much as to determine when a real fire exists, thus necessitating calling in the Secaucus Fire Department. Under all these circumstances, we believe that the six institutional firefighters should not be detached from the successfully functioning broad-based unit of non-supervisory blue and white collar County employees. Accordingly, Local 2772's petition is dismissed.[10/]

10/ The dismissal of this petition is without prejudice to the filing of another petition in the event that the institutional employees resume some more direct firefighting services or the majority representative fails to provide adequate representation.

ORDER

The Petition for Certification of Public Employee Representative is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Newbaker, Butch, Suskin and Hipp voted for this decision. None opposed. Commissioners Graves and Hartnett were not present.

DATED: Trenton, New Jersey
January 18, 1984
ISSUED: January 20, 1984

H.O. NO. 83-9

STATE OF NEW JERSEY
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In the Matter of

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-and-

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DOCKET NO. RO-82-154

Petitioner,

-and-

DISTRICT 1199J, NATIONAL UNION HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO,

Intervenor.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommended that a petition seeking a separate unit of institutional firemen employed by County of Hudson be dismissed because the petitioned-for unit was inappropriate. The Hearing Officer had concluded that the institutional firemen were firefighters within the meaning of the New Jersey Employer-Employee Relations Act. However, the Hearing Officer found that although the Police and Fire Compulsory Interest Arbitration Act did not provide interest arbitration for mixed units of firefighters with nonfirefighters, there was nothing in that Act which otherwise prevented such mixed units, or required separate units for firefighters. Since the institutional firemen had been included in an otherwise appropriate broad-based countywide unit, the Hearing Officer, noting the absence of conflict and inadequate representation in the existing unit structure, and noting the Commission's preference for broad-based units, recommended dismissal of the Petition.

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.

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Appearances:

For the Public Employer
Murray & Granello, attorneys
(David F. Corrigan of counsel)

For the Petitioner
William Bowes, Vice President, Local 2772

For the Intervenor
Greenberg, Margolis, Ziegler & Schwartz, attorneys
(Mark S. Tabenkin of counsel)

HEARING OFFICER'S
REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission ("Commission") on April 7, 1982 by Local 2772, International Assocation of Firefighters ("Petitioner") seeking to represent a

separate unit of six (6) institutional firemen (or firefighters) [1/] employed by the County of Hudson ("County") and currently included in a countywide unit represented by District 1199J, National Union Hospital and Health Care Employees, RWDSU, AFL-CIO ("Intervenor"). [2/] The Petitioner seeks to remove the institutional firefighter title from the Intervenor's unit and form a separate unit for said title because it alleged that the employees employed in that title are firefighters within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), and must therefore be in a separate unit because they are entitled to interest arbitration as set forth in the Act at N.J.S.A. 34:13A-16. [3/] The County and the Intervenor argued that the Petition be dismissed because the unit sought was inappropriate for two reasons. First, they argued

1/ The original Petition sought a unit of institutional firemen, fire captains, assistant fire chiefs, and fire chief. However, at the commencement of the hearing the Petitioner deleted the captain and assistant chief titles (unfilled positions) and the fire chief title (one person). The Petitioner, therefore, now only seeks a unit of institutional firemen.

2/ When the Petition was filed in April 1982, the majority representative of the countywide unit which included the institutional firemen position was Teamsters Local 286. However, in July 1982, District 1199J defeated Local 286 in a secret ballot election to become the majority representative of the countywide unit. Consequently, District 1199J has been substituted for Local 286 as the Intervenor herein.

3/ When the Petition was first filed the Petitioner also argued that the petitioned-for unit was appropriate based upon severance standards as set forth in In re Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971). Specifically, the Petitioner argued that Local 286 had not fairly represented the firefighters. However, at the hearing, the Petitioner dropped the severance argument and indicated it was not alleging that 1199J failed to represent them.

that the employees in question were not firefighters within the meaning of the Act and, therefore, were appropriate for continued inclusion in the countywide unit. Second, they argued that even if the affected employees were firefighters within the meaning of the Act, the Act, including the interest arbitration sections of the Act, did not mandate (unlike police employees) that firemen be in a separate negotiations unit.

Pursuant to a Notice of Hearing dated September 20, 1982, a hearing was held in this matter before the undersigned Hearing Officer on November 9, 1982, in Newark, New Jersey, at which all parties had an opportunity to examine and cross-examine witnesses, to present evidence and to argue orally. Subsequent to the close of hearing, the parties filed briefs in this matter, the last of which was received on January 10, 1983. 4/

Based upon the entire record in these proceedings, the Hearing Officer finds:

1. The County of Hudson is a public employer within the meaning of the Act, is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

2. Local 2772, International Association of Firefighters and District 1199J, National Union Hospital and Health Employees,

4/ The Petitioner's brief was received on December 6, 1982, but based on an extension of time, the County's brief was not received until January 5, 1983. Thereafter, on January 10, 1983, the Intervenor submitted a letter in lieu of brief and adopted the arguments set forth in the County's brief.

RWDSU, AFL-CIO, are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Petitioner seeks a secret ballot election to determine whether institutional firefighters wish to be represented in a separate unit. The County and Intervenor refuse to consent to such an election and argue that the proposed unit is inappropriate. The parties have been unable to agree upon the appropriate unit for institutional firefighters, therefore, a question concerning representation exists, and the matter is appropriately before the undersigned for Report and Recommendations.

4. There are two issues in this matter. First, whether institutional firemen are firefighters within the meaning of the Act. Second, if said employees are firefighters within the meaning of the Act, are they entitled to be in a separate unit because of the application of the interest arbitration provisions of the Act?

Findings of Fact

1. The six institutional firemen involved herein are employed by the County at its Meadowview Hospital Complex in Secaucus, New Jersey. These six firemen plus the fire chief comprise the Meadowview Hospital Fire Department whose primary function as enunicated in the Fire Department Policy Manuel (Exhibit J-5) is to prevent and fight fires, respond to alarms and extinguish fires, and keep informed of the latest fire prevention and fire fighting techniques. The Fire Department is located in its own facility at the Hospital Complex.

The job description of the institutional firemen as set forth in the County job description (Exhibit J-6) lists their main function as operating a fire engine and fighting and preventing fires. The job description includes other reponsibilities such as using hoses and participating in fire drills and training courses, operating firefighting equipment, and performing rescue work.

2. The title of institutional firemen has been included in the countywide unit since July 1, 1972. (Exhibits E-1, J-1, J-2, J-3, and J-4).

3. Robert O'Reilly, the Director of Personnel for Meadowview Hospital, testified that there are five negotiations units covering employees at the Hospital. He indicated that the Intervenor (1199J) represented about three quarters of the Hospital employees, that the United Nurses Organization represents the nurses, that an FOP union represented Hospital police officers, that there was a supervisors union, and finally, that black seal boiler room employees were in a separate unit. Transcript ("T") pp. 66, 68-69.

4. The undisputed evidence produced at hearing shows that the institutional firemen have received training as firefighters, they have used firefighting equipment and machinery, and they have actually fought fires. The evidence with regard to the training shows that the firefighters took part in a one day training program at the Fire Training Center in Wayne, New Jersey. That training consisted of entering a smoke house with Scott air packs and attacking the fire with water hoses, and rescuing mannequins from

the fire. (T p.24) Upon completion of that training, the firemen received certificates. (Exhibit P-1)

In addition to training at Wayne, the instant firefighters received on the job training by other institutional firemen, the Fire Marshall, and Chief Duane of the Meadowview Hospital Fire Department (T pp. 23, 33). Chief Duane, for example, trained the firefighters when to use chemical rather than water fire extinguishers (T p. 33), and he trained them on the hoses and hookups to the fire pumper. The firemen received additional training with the Secaucus Fire Department. (T pp. 42, 60)

In addition to testifying about the above training provided to the firefighters, William Bowes, one of the instant firefighters, testified about the hours of employment and the type of fire equipment available in the department. He indicated that the men work a shift of 24 hours on duty and 72 hours off with no more than two men to a shift. With regard to uniforms, Bowes testified that the firemen wear a blue uniform with a patch and badge which say "Hudson County Fire Department." He also indicated that they have traditional firefighting clothing such as a fire coat, pants, boots and helmet. Finally, Bowes testified that the Department has two fire pumpers which the men operate containing hoses, axes, extinguishers, first-aid kit, Scott air packs and other related tools and equipment. (T p. 38)

Bowes also testified about the type of fires he has fought as an institutional firefighter. One fire occurred on

January 1, 1980, in the Hospital basement and the firemen were notified by telephone and a fire alarm. Two firemen in addition to Bowes responded in the engine pumper. They wore their Scott air packs and first attacked the fire with CO^2 extinguishers, but when they discovered the fire was not electrical, they extinguished it with an inch and a half hose operated by Bowes. (T. pp. 19-21)

Bowes testified about a second fire he fought on July 15, 1982, at 3:20 a.m. He responded with the engine to a bed and mattress fire in the Hospital. Although an attendant had already used a chemical extinguisher, Bowes still had to pull the mattress outside and extinguish it with a water extinguisher. (T pp. 31-33)

5. Bowes also indicated that because of their shortage in manpower and equipment, they must frequently call in the Secaucus Fire Department to assist them in firefighting. (T pp. 35, 45) For example, Bowes indicated that in a bed fire on July 23, 1982, Secaucus was called in to utilize their air vacuum to clear out the smoke in the building. (T pp. 35-36)

6. Finally, Bowes testified that when not fighting fires, the firemen are engaged in other fire related duties. He stated that they clean the fire department and firefighting equipment, they inspect buildings, and they conduct fire drills. The fire drills consist of instructing hospital personnel what to do in the event of a fire and how and where to move the patients. (T pp. 50-51)

Decision and Analysis

The Firefighting Issue:

Although neither the Act nor the Commission rules provide a specific definition for a firefighter, the undersigned Hearing Officer developed such a definition in In re City of Plainfield, H.O. No. 82-5, 7 NJPER 525 (¶ 12232 1981) as follows:

> A firefighter is someone engaged in the fighting of fires which includes the use and operation of firefighting equipment and apparatus, and as evidenced by specific training in firefighting tactics and use of firefighting equipment. 5/

That case involved the duties of signal system repairers and radio repairers and the Hearing Officer found that those titles were not trained as firefighters, nor did they actually fight fires.

By contrast, the undisputed facts in the instant matter fully support a finding that institutional firemen are firefighters within the meaning of the Act. These institutional firemen are clearly trained to fight fires, they are trained to use firefighting equipment, and, as the evidence shows, they have actually fought fires and used firefighting equipment.

The fact that the training provided to the firefighters in question is not as extensive as the training afforded to firefighters in a larger department, or that the type and frequency of

5/ In In re City of Plainfield, D.R. No. 82-39, 8 NJPER 158 (¶ (¶ 13068 1982), the Director of Representation adopted the Hearing Officer's recommendation in In re City of Plainfield, H.O. No. 82-5, supra, to dismiss the Petition. However, in so doing, it was unnecessary for the Director to comment upon the recommended definition of a firefighter. Consequently, the Hearing Officer's definition of a firefighter is still nothing more than a recommendation because it has not been adopted by the Director or the Commission as Commission policy.

fires are minor and few and far between does not negate the fact that the institutional firemen are trained and perform as firefighters, and that the County expects them to perform as firefighters as evidenced by the Policy Manuel (Exhibit J-5) and the job description (Exhibit J-6).

When contrasted to the fire and ambulance dispatchers in In re Cty. of Camden, D.R. No. 82-14, 7 NJPER 631 (¶ 12283 1981), who were found not to be firefighters, the institutional firemen in the istant case perform the very duties the Director found lacking in the dispatchers. For example, in Camden, supra, the Director found that the dispatchers never participated in the physical act of fighting fires, were not required to have firefighting training nor was any provided to them, and, their knowledge of firefighting equipment was used only in relation to their communication functions. In the instant matter, however, the institutional firemen have physically fought several fires, they are required to undergo -- and have in fact received -- firefighting training, and they have been trained in -- and used -- firefighting equipment. The institutional firemen, therefore, are nothing but firefighters within the meaning of the Act.

The Unit Issue:

Having found that institutional firemen are firefighters within the menaing of the Act, they would automatically be entitled to avail themselves of interest arbitration pursuant to the Police and Fire Compulsory Interest Arbitration Act, N.J.S.A. 34:13A-14

et seq. ("Arbitration Act"), assuming they were in a unit appropriate for interest arbitration.

The Arbitration Act provides for compulsory interest arbitration in public fire and police departments and that Act set forth the definition of public fire departments as follows:

> 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. N.J.S.A. 34:13A-15.

That provision of the Arbitration Act makes it clear that firefighters within the meaning of the Act, such as the institutional firemen herein, must be in a negotiating unit exclusively comprised of firefighting employees in order to avail themselves of interest arbitration. The institutional firemen in this matter have always been included in the Intervenor's unit, a nonfirefighting unit, thus they are ineligible for interest arbitration unless they can form a separate unit.

The Petitioner did not attempt to justify a separate unit of institutional firemen based upon traditional severance standards, rather, it argued that as a group of firefighters within the meaning of the Act, it had a community of interest separate from other County employees, and that it was entitled to a separate unit in order to avail itself of interest arbitration.

Regarding the community of interest argument, the institutional firemen have been included in the Intervenor's unit for

several years and there has been no showing that they have received inadequate representation or that a conflict exists with the current unit structure.

Regarding the interest arbitration argument, there is nothing in the Act (including the Arbitration Act) which requires that firefighters be removed from units which include nonfirefighting employees. The Director held as such in In re Cty. of Essex, D.R. No. 83-2, 8 NJPER 460 (¶ 13216 1982):

> There is nothing in the Interest Arbitration Statute that compels the exclusion of fire-fighting employees from units containing other municipal, county, or state employees. at slip op. p.8.

An analysis of the Act, as well as the legislative history of the Arbitration Act supports the above conclusion. Although the Act mandates that;

> ... no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. N.J.S.A. 34:13A-5.3.

there is no such mandate for firefighters. In fact, the definition of public fire departments in N.J.S.A. 34:13A-15 (hereinabove) clearly contemplates that some firefighters may be included in units with nonfirefighters, and the Act indicates that those firefighters are not entitled to interest arbitration.

The legislative history of the Arbitration Act is equally persuasive in support of that argument. The Hearing Officer in In

re Cty. of Camden, H.O. No. 82-3, 7 NJPER 491 (¶ 12218 1981) [6/] reviewed the legislative history of the Arbitration Act and found that as initially introduced in Senate Bill No. 482 "public fire department" was defined as "any department of a municipality, county, district or the State or any agency thereof having employees engaged in firefighting." However, subsequent amendments added the exact language now found in the Statute (N.J.S.A. 34:13A-15), and an accompanying committee statement indicated that this change would limit the benefits of the bill to those firefighters not in mixed units.

Prior to final passage, however, a group of senators introduced Senate Bill No. 3172 to modify the definition of public fire department to include employees performing firefighting or related functions. The sponsor's statement accompanying that Bill declared in pertinent part that:

> Under this legislation, the only units not covered for such purposes would be units of mixed titles wherein some employees perform functions wholly unrelated to firefighting and who are only coincidentally included in such units.

Shortly after Senate Bill No. 3172 was proposed, Senate Bill No. 482, as amended, was signed into law. Although Senate Bill No. 3172 was not adopted, the sponsor's statement thereto, as well as the language in Senate Bill No. 482 and the statement to

6/ The Hearing Officer's recommendations in that case were adopted by the Director in In re Cty. of Camden, D.R. No. 82-14, supra, however, the Director made no comment with respect to the Hearing Officer's review of the legislative history of the Arbitration Act.

that Bill, clearly demonstrate that the Legislature was aware that some firefighters might be in units with nonfirefighters, and that the Legislature specifically intended to exclude those firefighters from coverage under the Arbitration Act. The Legislature did not intend to remove firefighters from otherwise appropriate mixed units only to give them the opportunity to utilize interest arbitration.

It is equally important to note that nothing in the Act prevents the instant Petitioner, or any firefighters labor organization, from representing a mixed unit of firefighters and nonfirefighters. In In re City of Hackensack, D.R. No. 79-27, 5 NJPER 150 (¶ 10085 1979), the Director said:

> ... [T]he Act does not preclude nonfirefighting employees form choosing a firefighter's organization, or an affiliate thereof, as their representative, nor does the Act preclude a firefighting organization, or affiliate thereof, from becoming the exclusive representative of such employees in an appropriate unit. at slip op. p.7.

This language means that the Petitioner could seek to represent the unit currently represented by the Intervenor, however, interest arbitration would still not be available to the institutional firemen if the Petitioner represented the existing unit.

In view of the Commissioner's longstanding preference for broad-based units encompassing a variety of functions, 7/ and in view of the Commission's preference not to disturb unit structures

7/ In re State of New Jersey, P.E.R.C. No. 68 (1972), aff'd State of New Jersey v. Professional Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974).

with a lengthy negotiations history, [8/] and absent evidence of conflict and inadequate representation, the existing unit structure -- including the firefighters -- should remain intact.

Having found that the Arbitration Act does not mandate a separate unit for the institutional firemen, and noting no failure of fair representation by the Intervenor or any evidence of conflict of interest, the petitioned for unit is inappropriate and the Petition should therefore be dismissed.

Recommendations

1. Institutional Firemen employed by the County are firefighters within the meaning of the Act.

2. The Arbitration Act does not prevent mixed units of firefighters and nonfirefighters.

3. The petitioned-for unit is inappropriate and the Petition must, therefore, be dismissed in its entirety.

Respectfully submitted,

Arnold H. Zudick
Hearing Officer

DATED: March 8, 1983
Trenton, New Jersey

8/ In re Englewood Bd. of Ed., P.E.R.C. No. 81-100, 7 NJPER 141 (¶ 12061 1981).