

D.R. NO. 2002-14

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

In the Matter of

TOWNSHIP OF PENNSVILLE,

Public Employer,

-and-

Docket No. RO-2002-64

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS,

Employee Representative.

SYNOPSIS

The Director of Representation directs a secret ballot election be conducted among a collective negotiations unit of "all personnel regularly engaged in fire suppression services including EMTs." The Director finds that while the petitioned-for employees were hired with the job title EMT, they are called upon and, in fact, regularly do assist the Township's volunteer firefighters at fire scenes during their regular workshift. The Director further finds that the duties performed by the EMTs at fire scenes include fire suppression and that they are paid for the performance of the fire suppression as part of their regular salaries.

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Appearances:

For the Public Employer  
Andrea Rhea, attorney

For the Employee Representative  
Keith B. Kemery, Business Agent

**DECISION AND DIRECTION OF ELECTION**

On January 29, 2002, the International Association of Firefighters (IAFF) filed a Petition for Certification with the Public Employment Relations Commission (Commission). The IAFF seeks to represent all full-time paid employees engaged in fire suppression duties employed by the Township of Pennsville (Township). The proposed unit would include the Township's emergency medical technicians (EMTs), all of whom, the IAFF claims, also perform firefighting duties. The petition is supported by an adequate showing of interest.

The Township does not consent to a secret ballot election. It contends that the individuals petitioned for are employed only to

provide emergency medical services. The Township concedes that the EMTs engage in fire suppression, but claims that, pursuant to N.J.S.A. 9:160-1, they do so as volunteers, not as employees. IAFF contends that all of the Township's EMTs are required to, and, in fact, do regularly supply fire suppression services during the course of their employment.

We have conducted an administrative investigation into the petition. N.J.A.C. 19:11-2.2 and 2.6. The parties submitted documentation and statements in support of their respective positions. By letter dated May 16, 2002, I summarized the parties' positions and accompanying evidence and advised the parties of my intention to direct an election for all regularly employed personnel engaged in providing fire suppression services including EMTs. I provided the parties an opportunity to respond and forward additional materials. On May 28, the Township submitted a supplemental position statement reiterating its initial argument that the primary duties of the EMTs are to provide emergency medical services, not fire suppression. The Township also argued in its May 28 submission that, pursuant to N.J.S.A. 40A:14-41, its existing volunteer fire departments cannot be converted into paid departments absent the Township's adoption of an ordinance providing for such a conversion. The Township has not passed such an ordinance. Further, it asserts that any memoranda providing directives to the EMTs to participate in firefighting cannot be relied upon as evidence since such "directives" were never formally adopted "as

policy" by the Township. The Township also reiterated its argument that N.J.S.A. 9:160 permits municipal employees who are members of a volunteer fire department to engage in firefighting during the hours of their regular employment. Finally, the Township submitted a December 6, 2001 ordinance for our review. The IAFF submitted a supplemental position statement detailing the membership status in the fire company of each of the six EMTs. There being no substantial and material factual issues in dispute, the disposition of the petition is properly based on our administrative investigation. I find the following facts: -

The Township is 24 square miles extending from Carneys Point Township on the north end to the City of Salem. It is basically a mixture of rural and strip-type commercial developments along its two main roadways. The Township traditionally has used the volunteer services of two fire companies identified as Company #1 and Company #2 to meet its fire and emergency medical service needs. Each fire company is located in a different part of the Township and each began as a neighborhood company drawing members from the area of its origins. Company #2 is located in the north end of the Township in the community known as Deepwater. Company #1 is located in the mid-part of the Township and has always included a volunteer rescue service which was comprised of water rescue on a small scale and ambulance service.

The Township owns the firehouse properties and the equipment used to fight fires as well as the ambulance equipment.

The Township also provides an operating budget for each of the fire companies. Each company is a private organization incorporated as a non-profit corporation. Individual volunteer membership is decided by the private organization and the names of the members are placed on file with the Township without need for Township approval. The Township is governed by a mayor/committee. The ordinance dealing with fire companies accepted the organizations as they administered themselves, subject however, to the fact that the Township maintained control as to how the public funds were expended. At no time were the members of either fire company considered "employees" of the Township. They were volunteers to whom public property and funds were entrusted to perform fire and rescue services. These volunteer fire and rescue services and the Township subsidy of property and funds provided the Township with fire and rescue services which operated efficiently and economically for a long period of time.

Through time, change of personnel, and methods of government, more sophistication was required in the qualifications for provision of these services. Volunteerism dwindled and it became more difficult to obtain volunteers. The volunteer response for ambulance duty decreased and the Township was faced with the proposition that to ensure the availability of ambulance service to Township residents, paid personnel should be employed. The expense to the Township was offset by charging for the service.

Because of the circumstances, the Township decided to hire emergency medical technicians to provide ambulance services as needed on a 24-hour basis. In 2000, the Township passed an ordinance establishing an ambulance department separate from the fire department and hired several EMTs. There are currently six EMTs, including the EMT supervisor. The EMTs work approximately 53 hours per week at a regular hourly rate. Their work schedule is 24 hours on duty followed by 48 hours off. All of the EMTs are also trained as firefighters.

Apparently none of the six EMTs currently hold active membership in either of the Pennsville fire companies. Three of the EMTs -- Todd Halter, Ronnie Harris, and Matthew Smigelski -- resigned their membership from Pennsville fire company. Two of the six EMTs -- Benjamin Hitzelberger and Joseph Schmidt -- never held membership in either of Pennsville's fire companies. The sixth EMT -- Bethanne McCarthy -- maintains "life membership" in the Pennsville fire department but does not actively participate in its operations or respond to calls.

The Township provided a copy of the 2000 ordinance which established the ambulance department, along with a July 2001 amendment to the original ordinance (Ordinance A-23-01) generally authorizing employment of EMTs in the ambulance department. The purpose for the July 2001 amendment, by its own terms, was to "include a mission statement, and changes necessary to effectuate that statement." Additionally, the preamble of A-23-01 provides in pertinent part:

WHEREAS, the Mission Statement of the Ambulance Department shall be as follows:

Township employees assigned to the Department created herein shall have the primary responsibility of rendering emergency medical care to Township residents, and residents of surrounding communities, under certain circumstances, and transporting said individuals to a primary care facility. The employees of the Department shall have a secondary responsibility to cooperate with other Township agencies in order to promote the public safety of the citizens of this Township including the Township volunteer fire department. . . . In addition EMT's shall assist the Pennsville fire department as more fully set forth in Section 9A. 1-4 (06-15-00, Am 08-21-01). [emphasis added].

9A. 1-4 "Nature of Services" provides in part:

. . . When not actively engaged in providing the specific services as set forth above the employees of the Department as part of their collateral duties shall be dispatched to fire calls. . . . Upon such a dispatch, the ambulance shall respond to the scene, and the EMT's manning such ambulance shall assist the Township's volunteer fire department in carrying out its responsibilities. . . . More specifically, if an ambulance call is received while an employee is fighting a fire, said employee or employees shall cease and desist from said activity and respond to the ambulance call as soon as they deem it safe to do so. [emphasis added]

The reason for the clarification of EMT duties and qualifications continues in the amendment as follows:

WHEREAS, the members of the Township Committee have now determined that the services of the Department's Emergency Medical Technicians (hereinafter referred to as EMT's) are not being fully utilized during those periods of time when the EMT's are not responding to requests for emergency medical services, and

WHEREAS, it is the obligation of the members of the Township Committee to ensure that the tax dollars of the Township's residents are effectively utilized.

Section 9A.1-8A2(a) and (b): Appointments to the Department/Qualifications:

(a) EMT Certification

(b) All necessary qualifications to enable them to carry out their firefighting collateral duty. . . . [emphasis added]

The ordinance, as amended, was unanimously adopted by the Township Committee on July 21, 2001. Specific hiring and salary ordinances establish the rate of pay for the EMTs and the ambulance department administrator who reports to a department head. On December 6, 2001 the Township again amended the earlier ordinance concerning the use of EMTs. The December 2001 amendment contains no reference to the requirement that EMTs possess "all necessary requirements to carry out their firefighting collateral duties. . . ." However, the December 2001 amendment, like the earlier EMT ordinance, continued to require EMTs to assist volunteer firefighters in fire suppression duties when not actively engaged in providing emergency medical services.

In a January 18, 2001 memorandum from a member of the Township Committee to all EMTs, the requirements for the EMTs in regard to the fire department are described as a "[request] to run with the fire department if [the EMT] is a volunteer member" of that fire department. The memorandum gives permission to EMT employees of the Township to volunteer with the fire department but states that EMTs "cannot be forced to man the fire equipment." However, it



does require that the EMTs "respond to a fire call with the ambulance" and proceeds to "highly [recommend]" that the EMTs responding to the fire call assist the fire department, if needed. The January 18, 2001 memorandum allows volunteer firefighters to continue to volunteer to provide emergency medical services and specifies that if the firefighters choose to do so, they continue to be volunteers, not employees. Finally, the memorandum instructs that while EMTs are "off duty" they can volunteer with the fire companies.

On June 5, 2001, EMT Supervisor Todd Halter issued a memorandum to all EMTs indicating that they are "required to staff fire apparatus" within the Township. This requirement included a direction to the EMT ambulance driver in any fire situation to arrive at the fire site in "full turnout gear." Turnout gear is that equipment/clothing necessary to perform firefighting duties. In an electronic mail message dated June 11, 2001 entitled "Pennsville EMS" and sent from EMS Administrator K. Cowperthwait to J. Ayars, Cowperthwait relayed, in pertinent part, the following:

The employees work for Pennsville Twp. EMS department. Their duties include EMS, firefighter. (emphasis added).

For fires they [EMT's] are required to staff the apparatus. However, one of the crew will bring the ambulance to the scene.

The e-mail continues to direct that:

The EMT crew, after dressing in their turnout gear at the fire site . . . 'becomes part of the Engine or Ladder crew depending on the staffing and arrival order.' If there is an EMS run

during the fire incident . . . depending on the type of EMS emergency and the status of the fire call, the officer in charge [at the fire site] will determine if the ambulance crew can clear and respond to the EMS run. [emphasis added]

"Standard Operating Guidelines" for the Township Ambulance Department under a section entitled "EMS Responsibilities at Non-EMS Incidents" provide that, ". . . employees of the Ambulance Department shall act as firemen on any incident not requiring immediate medical care." In the same guidelines, ". . . EMS crew will be assigned to the fire apparatus as the volunteer fire staff sees fit," and the EMTs are to apply fire response guidelines "when operating fire apparatus . . . and riding positions of the Pennsville Fire Department."

Since the July 21 adoption of the EMS amendment, as recently as February 2002, in a memorandum to all Township Department Heads, the Township Clerk affirmed that ". . . the Township has now mandated that all EMT's respond to fire scenes if they are available to assist with fire suppression." [emphasis added]

Daily logs of "Personnel Response to Incidents" for the Township EMS covering the period from July 2001 through February 28, 2002 show that the EMT crews and individual EMTs have responded to numerous fire suppression calls on a regular basis, during work hours. Responses have included staffing fire engine #53 and/or fire rescue truck #56 and/or the ambulance. The IAFF further asserts that the EMTs' duties include cleaning, checking and maintaining the fire apparatus and equipment in the firehouse during their shift.

ANALYSIS

N.J.S.A. 34:13A-6(d) charges the Commission with deciding the appropriate unit for collective negotiations. See State v. Prof. Assn. of N.J. Dept. of Ed., 64 N.J. 231 (1974). In order to determine the appropriate unit in this case, we must decide whether personnel employed by the Township holding the job title emergency medical technician are "employees engaged in firefighting" within the meaning of the Police and Fire Public Interest Arbitration Reform Act (Reform Act), N.J.S.A. 34:1A-14 et seq. at 34:13A-15; and whether the collective negotiations unit should be described as "all personnel regularly employed by Pennsville Township engaged in providing emergency medical and fire suppression services."

The Reform Act does not define "firefighting" and there is no bright-line standard for determining whether employees are firefighters. That determination must be based on a case-by-case assessment of such factors as the employees' training, job descriptions, actual job duties in regard to the overall job duties of firefighters, and the mission of their unit. See Gloucester Tp. Bd. of Fire Commissioners, D.R. No. 91-6, 16 NJPER 521 (¶21228 1990); Town of Dover, D.R. No. 89-17, 15 NJPER 164 (¶20069 1989); Camden Cty., D.R. No. 82-14, 7 NJPER 631 (¶12283 1981); City of Plainfield, H.O. No. 82-5, 7 NJPER 525 (¶12232 1981) recommendation

adopted D.R. No. 82-39, 8 NJPER 156 (¶13068 1982).<sup>1/</sup> Moreover, decisions dealing with the definition of firefighter and/or employees "engaging in firefighting" reason that the broad process of firefighting includes fire prevention, fire suppression, and post-suppression work. See, e.g., State of New Jersey, H.O. No. 86-1, 11 NJPER 635 (¶16224 1985), recommendation to dismiss adopted P.E.R.C. No. 86-98, 12 NJPER 206 (¶17081 1986), rev'd 222 N.J. Super. 475 (App. Div. 1988), rev'd and PERC order reinstated sub nom. In re Matters of State, 114 N.J. 316 (1989).<sup>2/</sup>

Applying the factors set forth above for determining whether the employees here are engaged in firefighting, I find that the Pennsville Township EMT employees are engaged in firefighting during their working hours as part of their employment responsibilities.

The Township asserts that historically the two volunteer fire companies have had primary responsibility for firefighting in the Township. When the volunteer service was no longer adequate to

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<sup>1/</sup> City of Plainfield (signal division employees were not firefighters). Contrast Dover (signal system inspector was a firefighter where, despite his title, he performed the same duties as firefighters); Gloucester (maintenance mechanic responsible for the maintenance and upkeep of fire stations was a firefighter where he was required to respond to all fires during his working hours and, while at fire scenes, performed all the functions of a firefighter).

<sup>2/</sup> However, employees who engage in only "de minimus" activities in the process of firefighting as traditionally performed by firefighters may not qualify under any definition of firefighter. See Plainfield.

meet demand for emergency medical service, the Township established an ambulance department and staffed that department with paid EMT employees pursuant to ordinance. On its face, the ordinance and its July 2001 amendment include a Mission Statement describing the primary duties of the newly hired EMT employees as rendering emergency medical care to Township residents. However, pursuant to the ordinance, the EMTs' secondary or collateral responsibility is to respond to fire calls and assist the Pennsville fire company as needed. Although the Township seems to be asserting that the December 2001 amendment eliminated the requirement that EMTs be trained as firefighters, they nevertheless are in fact trained in firefighting and they continue to be required to perform firefighters' duties.

The Township does not deny that EMTs are called upon to assist volunteer firefighters at fire scenes during their regular workshift. Moreover, daily EMT activity logs show that the petitioned-for employees regularly respond to fire calls during their work shifts, in full firefighting gear as directed by the Township. The EMTs perform duties in response to fire calls which include driving fire engines, driving and staffing fire rescue trucks and, staffing other firefighting apparatus at the fire scene.

The Township argues that it did not intend to create a paid fire department and that, pursuant to N.J.S.A. 40A:14-41, it could only have converted its volunteer fire company into a paid department by the adoption of an ordinance providing for such a

conversion. The Township says its has not passed such an ordinance, and that it has no paid firefighters. It maintains that, as permitted by N.J.S.A. 9:160-1, when EMTs respond to a fire call during their workshift, they are no longer performing as Township employees; rather they are on release time to serve as volunteer firefighters. However, the Township's contention is contradicted by the facts. The EMTs are expected to assist the Pennsville fire department as firefighters as is made clear in the ambulance department's Mission Statement, the EMS Supervisor's June 5, 2001 memo, the EMS Administrator's June 11, 2001 directive by e-mail, the EMT Standard Operating Guide, the daily work logs, and the Township Clerk's February 2002 memorandum to all Township department heads confirming that "EMT's are required to respond to fire scenes and assist with fire suppression" if available. The Township argues that we should ignore administrative directives to the EMT's about reporting to fire calls because such directive were not officially adopted as policy of the municipality. I reject that argument. The administrative directives were consistent with the Township's ordinance requiring EMTs to assist the fire company. Further, whether the Township officially sanctioned the directives or not, they were effectuated and the EMTs have in fact been performing firefighter's duties.

In addition, all EMTs were trained in firefighting and all of the current EMTs were hired when such training was required by ordinance. They are required to dress in fire turnout gear and

become part of the fire crew once they report to the scene of a fire. The EMTs perform these fire suppression duties during their regular work shift and that work time is included as part of their regular salary.

Moreover, it would be difficult to conclude that the EMTs are merely "volunteering" with the fire company since none of the six of the current EMTs hold active membership in the Pennsville fire company, and two of them have never held such membership.

Based upon all of the foregoing, I find that the employees petitioned-for here, while hired with the job title EMT, engage in both the provision of emergency medical services and fire suppression services as required by their employment with the Township. I do not agree that these employees become "volunteers" when they respond to fire calls while on duty as Township EMT employees.

Accordingly, I direct that a secret ballot election be conducted among the employees in the petitioned-for unit:

Included: All personnel regularly employed by the Township of Pennsville engaged in fire suppression services including EMTs.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, police employees, casual employees, and all other Township employees.

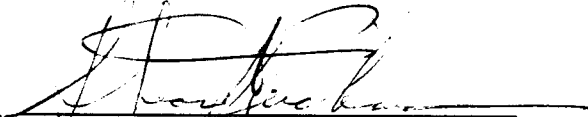
The election shall be commence no later than thirty (30) days from the date of this decision and shall be conducted by mail ballot. Those eligible to vote must have been employed during the

payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-10.1, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Stuart Reichman  
Director of Representation

DATED: June 26, 2002  
Trenton, New Jersey