

D.R. NO. 90-17

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

In the Matter of

CAMDEN FIRE DEPARTMENT,

Public Employer,

-and-

JOHN F. MILLS,

Docket No. RO-90-33

Petitioner,

-and-

IAFF LOCAL 788,

Intervenor.

SYNOPSIS

The Director of Representation finds that fire prevention specialists are not supervisors within the meaning of the Act and dismisses a petition filed to remove them from a rank and file unit and add them to a unit of supervisory firefighters.

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Appearances:

For the Public Employer
Murray, Murray & Corrigan, Esqs.
(Julie Beattie, of counsel)

For the Petitioner
John F. Mills, pro se

For the Intervenor
Tomar, Simonoff, Adourian & O'Brien, Esqs.
(Mary L. Crangle, of counsel)

DECISION

On September 20, 1989, John F. Mills ("Mills") filed a Petition for Certification of Public Employee Representative (Docket No. RO-90-33), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). Mills filed the petition on behalf of fire prevention specialists assigned to the Camden Fire Marshall's Office. Mills seeks to add the fire prevention specialists to an existing unit of supervisory

firefighters that is represented by the International Association of Firefighters, Local 2578 ("Local 2578"). The fire prevention specialists are currently represented by the International Association of Firefighters Local 788 ("Local 788") in a unit of non-supervisory firefighters. Local 788 submitted a copy of the collective negotiations agreement between it and the City of Camden ("City") covering the petitioned-for employees from January 1, 1984 through December 31, 1986 and an interest arbitration award between the parties for the three-year period from January 1, 1987 through December 31, 1989. Local 788 has been granted intervenor status pursuant to N.J.A.C. 19:11-2.7. Local 788 refuses to consent to a representation election because it alleges that fire prevention specialists are not supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1.1 et seq., ("Act") and should not be removed from the non-supervisory firefighter unit. Local 2578 does not object to inclusion of fire prevention specialists in its supervisors' unit but takes no position on the propriety of such inclusion.^{1/} The City takes no position in this matter.

^{1/} This accretion petition was brought by an individual and not the majority representative. However, none of the parties have challenged the standing of Mills. Accordingly, we will make no comment as to his standing.

On October 23, 1989, a Commission agent conducted an investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts. It appears that there are no substantial and material factual issues in dispute which may more appropriately be resolved thorough the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the petition is properly based on our administrative investigation. The following facts appear.

Local 788 represents a unit of approximately 171 firefighters and four fire prevention specialists.^{2/} Fire prevention specialist is the first level of promotion in the Camden Fire Department and is the intermediate title between firefighter and fire captain. Fire captains and battalion chiefs are represented by Local 2578 in its supervisory unit.

Fire prevention specialists inspect buildings and equipment, investigate fire scenes and conduct fire prevention programs for schools and civic organizations. Fire prevention specialists are in charge of fire prevention programs and direct any firefighters who accompany them on such programs. At fire scenes, fire prevention specialists instruct firefighters in debris removal, fire investigation and evidence preservation. When fire prevention specialists need assistance with fire scene investigations, they

^{2/} Although the title of employees performing fire prevention functions has changed, such employees have been represented by Local 788 since the unit was certified in 1971.

respect the chain of command and ask captains or battalion chiefs to assign firefighters. However, if firefighters perform inspection duties incorrectly, fire prevention specialists can stop them directly without following the chain of command.

Hiring and discharge are governed by civil service procedures and such decisions are made by the deputy chief, chief and city administrator. Recommendations for hiring, discharge and discipline are made by the supervising fire prevention specialist or the fire official. Fire prevention specialists are not involved in hiring or discharge and do not recommend same. They do not impose or recommend discipline, even at fire scenes and investigations. Fire prevention specialists cannot assign work or grant time off to firefighters. They only enforce work rules if they affect operations at the fire site. In fact, the fire prevention specialists have no role in the firefighter's grievance procedure. Fire prevention specialists and firefighters use the same grievance procedure. There is no evaluation procedure for firefighters or fire prevention specialists.

Fire prevention specialists can be called upon to assist with firefighting in emergency situations and fire prevention activities are contained in the firefighters' job description. Fire prevention specialists must have special licenses and additional training and education beyond that of firefighters. Their immediate supervisor is the supervising fire prevention specialist. This title is in the supervisory firefighters' unit represented by Local

2578. Fire prevention specialists function independently and without direct supervision in the performance of day-to-day tasks. Their pay scale, uniforms, hours and immediate supervisor are different from those of firefighters.

Mills contends that the fire prevention specialists' direction of firefighters at fire prevention programs and fire investigations constitutes supervision, and that as supervisors, the fire prevention specialists should be removed from the non-supervisory unit and added to the supervisory unit. Mills also relies on some differences between working conditions of fire prevention specialists and firefighters as supporting the requested severance of the specialists from the non-supervisory firefighters' unit.

Local 788 contends that the specialists have been included in its unit for a significant period of time and that the unit structure is stable. It states that the specialists have a community of interest with the firefighters and that the specialists are not supervisors within the meaning of the Act. Local 788 contends that there is no conflict of interest between the specialists and firefighters to justify severance, and that addition of the specialists to Local 2578's unit would create a conflict of interest by adding non-supervisors to a supervisory unit.

N.J.S.A. 34:13A-5.3 defines a supervisor as an employee "having the power to hire, discharge, discipline, or to effectively recommend the same." All the circumstances of a particular case

must be reviewed to determine whether an employee has and regularly exercises such power. City of Margate, P.E.R.C. No. 87-146, 13 NJPER 500 (¶18184 1987); Cherry Hill Tp., P.E.R.C. No. 30 (1970); Somerset Cty. Guidance Center, D.R. No. 77-4, 2 NJPER 358 (1976). The fire prevention specialists have never hired, disciplined or discharged any firefighters or recommended same. Such decisions are made by the Deputy Chief, Chief and Business Administrator and such recommendations are made by the Supervising Fire Prevention Specialist or the Fire Official. Although Mills contends that the fire prevention specialists' direction of firefighters at fire prevention programs and fire scenes constitutes supervision, mere direction of work is not sufficient to support a finding of supervisory status. Hackensack Bd. of Ed., P.E.R.C. No. 85-59, 11 NJPER 21 (¶16010 1985); Middlesex Cty. Welfare Bd. and CWA, P.E.R.C. No. 10 (1969); Union Cty. Bd. of Social Services, D.R. No. 87-29, 13 NJPER 509 (¶18190 1987); Ewing Twp. Bd. of Ed., D.R. No. 87-22, 13 NJPER 195 (¶18083 1987); County of Middlesex, D.R. No. 79-8, 4 NJPER 396 (¶4178 1978). Fire prevention specialists are not supervisors within the meaning of the Act.

Mills also contends that the fire prevention specialists do not share a community of interest with firefighters. He cites the differences in salary, hours, supervisors, education, training and uniforms between fire prevention specialists and firefighters to support this contention. In City of Hackensack, D.R. No. 79-22, 5 NJPER 150 (¶10085 1979), the Director found that fire inspectors

shared a community of interest with firefighters. The Director reached this conclusion even though the fire inspectors received an additional stipend and larger clothing allowances and had additional education and different work schedules than firefighters. The Director found that although the working conditions of fire inspectors and firefighters were not identical, they were generally similar. He also noted that the fire inspectors were trained as firefighters and characterized the tasks associated with fire prevention as elements of the broad process of firefighting. See also State of N.J. and N.J. State FMBA, CWA, and IFPTE Locs. 1037 and 195, 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).

Although there are some differences between the working conditions of firefighters and fire prevention specialists, they are outweighed by both the similarities between the groups and the long and stable history of the bargaining unit. Accordingly, there is a community of interest between fire prevention specialists and firefighters; severance of the fire prevention specialists from the firefighter's unit is not appropriate.^{3/} Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971).

^{3/} It would not be appropriate to place the fire prevention specialists in the unit containing their immediate supervisor, the supervising fire prevention specialist. Such placement would result in a unit where supervisors exercise significant supervisory authority over other supervisors and would create an impermissible conflict of interest. Board of Education of West Orange v. Wilton, 57 N.J. 404 (1917).

Based upon the foregoing, the Petition for Certification of Public Employee Representative is dismissed.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Edmund G. Gerber, Director

DATED: January 19, 1990
Trenton, New Jersey