P.E.R.C. NO. 86-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

STATE OF NEW JERSEY,

Public Employer,

-and-

NEW JERSEY STATE FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION,

Petitioner,

Docket No. RO-83-101

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1037 & LOCAL 195, IFPTE,

Intervenors.

STATE OF NEW JERSEY,

Public Employer,

-and-

NEW JERSEY STATE FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION,

Petitioner,

Docket No. RO-83-102

-and-

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1037 & LOCAL 195, IFPTE,

Intervenors.

SYNOPSIS

The Public Employment Relations Commission dismisses two petitions for certification of Public Employee Representative filed by the New Jersey State Firemen's Mutual Benevolent Association ("FMBA"). FMBA sought to represent a negotiations unit of supervisory firefighters and a negotiations unit of non-supervisory firefighters. The Commission, in agreement with a Hearing Officer, finds that labor stability would be better served by the firefighters' continued inclusion in broad-based negotiations units.

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Appearances:

For the Public Employer
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(Michael L. Diller, D.A.G.)

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Rinaldo & Rinaldo, Esqs.
(Matthew T. Rinaldo, Esq. and
John L. Maddalena, Esq.)

For the Intervenor CWA
Steven P. Weissman, Esq.

For the Intervenor IFPTE, Local 195
Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Esq.)

DECISION AND ORDER

On November 1, 1982, the New Jersey State Firemen's Mutual Benevolent Association ("FMBA") filed two Petitions for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"). The FMBA seeks to represent a unit of supervisory firefighters and a unit of non-supervisory firefighters. In the supervisory unit, the FMBA seeks to represent the employees with the following Civil Service classifications: "State Fire Warden," "Supervising Forester (Fire)," "Principal Forester (Fire)," "Deputy Fire Marshall" and "Institution Fire Chief." In the non-supervisory unit, the FMBA seeks to represent the following employees: "Senior Forester (Fire)," "Assistant Forester (Fire)," "Field Section Fire Warden," "Inspector, Fire Safety," and "Assistant Institution Fire Chief."

Most, but not all of these classifications are in existing broad-based units of State employess. The Communications Workers of America ("CWA") represents a unit of professional employees; this unit includes Senior Forester (Fire) and Assistant Forester (Fire) classifications. CWA also represents a unit of primary level supervisors; this unit includes the Principal Forester (Fire) and Institution Fire Chief. Local 195, International Federation of Professional and Technical Engineers ("IFPTE") represents a unit of

employees in operations, maintenance and service; this unit includes the Field Section Fire Warden classification. IFPTE also represents a unit of inspection and security employees; this unit includes the Inspector Fire Safety and Assistant Institution Fire Chief classifications. The State Fire Warden, Deputy Fire Marshall and Supervising Forester (Fire) are not represented.

CWA and IFPTE have intervened, pursuant to N.J.A.C. 19:11-2.7.

All parties submitted statements of position to the Director of Representation. The FMBA's argument that the petitioned-for units are appropriate is threefold:

> (1) firefighters do not have a community of interest with the other employees in the existing units;
>
> (2) firefighters have a unique community of interest among themselves; and
>
> (3) these firefighters have not received responsible representation from their present majority representative.

The State's position is:

> (1) forest firefighters should not be severed from the existing unit because they have a strong community of interest with foresters; they are part of an integrally related whole charged with protecting the State's parks and forests and they share common goals and working conditions and facilities;
>
> (2) there is a long history of stable negotiations in the existing units;
>
> (3) there is no factual support for the claim that firefighters have not received responsible representation;

(4) the State Fire Warden, Supervising Forester (Fire), and Deputy Fire Marshall are "managerial executives" within the meaning of the Act and therefore are not appropriate for inclusion in any negotiations unit; further, inclusion of these titles in a unit with other firefighting supervisors would create an impermissible conflict of interest;

(5) the Deputy Fire Marshall and "Inspector Fire Safety" are not firefighters within the meaning of the Act.

CWA and IFPTE's positions are:

(1) they have provided responsible representation to the firefighters in their units;

(2) the firefighters share a community of interest with the other employees in the units; and

(3) there is a long history of stable and successful negotiations in these units.

In addition, IFPTE contends that the "Assistant Institution Fire Chief" is not a "firefighter" within the meaning of the Act.

On January 18, 1983, the Director consolidated the two petitions and issued a Notice of Hearing.

On July 12 and September 21, 1983 and May 14, 15, 16, 17, 18 and June 5 and 13, 1984, Hearing Officer Charles A. Tadduni conducted hearings. The parties examined witnesses, introduced exhibits and argued orally. They also filed post-hearing briefs.

On August 27, 1985, the Hearing Officer recommended dismissal of the petitions. H.O. No. 86-1, 11 NJPER 635 (¶16224 1985). He concluded:

(1) all of the petitioned-for employees are "firefighters" within the meaning of the Act;

(2) the State Forest Fire Warden is a "managerial executive" within the meaning of the Act and therefore may not be included in any negotiations unit. The Deputy Fire Marshalls and the Supervisory Foresters (Fire) are not managerial executives;

(3) Supervising Forester (Fire) and Principal Forester (Fire) may not be included in the same negotiations unit because they have a substantial conflict of interest since the Supervising Forester evaluates and has authority to discipline the principal Forester; and

(4) the petitioned-for unit is inappropriate since there has been a decade of stable collective negotiations; the petitioners have not established that they possess a "unique" community of interest amongst themselves; and the petitioners have not established that the existing majority representative has not fairly represented them.

On September 11, 1985, the FMBA filed its exceptions. It contends that:

(1) labor stability would be better served by severance than continued inclusion of firefighters in the existing mixed units;

(2) the presumption set forth in County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶15059 1984), that severance is appropriate for firefighters was not rebutted;

(3) the Hearing Officer's failure to find a special community of interest among the firefighters was erroneous; and

(4) CWA has not adequately represented the firefighters.

Also on September 11, 1985, the State filed its exceptions. It contends that the Hearing Officer erred in finding that the Deputy Fire Marshall and Inspector, Fire Safety are firefighters within the meaning of the Act.

On September 18 and 23, 1985, IFPTE and CWA, respectively, filed their responses. They urged adoption of the Hearing Officer's decision in toto.

On December 17, 1985, the parties argued orally before the Commission.

We have reviewed the record. The Hearing Officer's findings of fact (6-22), none of which have been excepted to, are accurate. We adopt and incorporate them here.

The central issue is whether the positions in the petitioned-for units should be severed from the existing units. Since this case involves firefighters, our traditional severance standards do not control. Compare, e.g., Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971). See generally, State v. Prof. Ass'n of N.J., Dept. of Ed., 64 N.J. 231 (1974). Rather, as we enunciated in County of Hudson, supra:

> ...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 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 fire-fighters 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] Other factors may be identified case-by-case.]
> [Id. at 116]
> (emphasis added)

In Hudson, we held that severance was not appropriate. We noted these factors: (1) a long history of successful negotiations in the broad-based mixed unit; (2) a complete absence of evidence of irresponsible representation; (3) a readily apparent community of interest between the firefighters and the other members of the negotiations unit with respect to responding to patients' problems at the hospital; and (4) the minimal nature of the employees' firefighting services.

This case is our first occasion since Hudson to apply its standards. We conclude that, like Hudson, severance is inappropriate. We base this conclusion on the following factors set forth in Hudson.

The length and stability of the negotiations history concerning the mixed units. There is a long history of stable collective negotiations, with agreements dating back to the early 1970's (and a less formal relationship dating to the 1960's). There is no evidence of instability or that the severance of these firefighters would enhance stability.

The adequacy of representation and incidents of unfair representation affecting firefighters in the unit. We agree with the Hearing Officer that both CWA and IFPTE have fairly represented the firefighters. In fact, there is not a single instance of firefighters having been unfairly represented.

The composition and community of interest of the mixed unit. A community of interest exists. The Hearing Officer found "a high degree of job interaction with non-firefighter/ co-departmental employees, [a] common supervisory hierarchy, common departmental work rules and working conditions, common work sites and shared work facilities and equipment."

The nature of services rendered by the employees in question. The firefighters certainly perform a unique role different from that of other employees: they fight fires. But from the larger perspective their function is not independent from other employees. In fact, in contrast to local fire departments, these firefighters work in three separate departments and interact more frequently with non-firefighters in their respective departments than they do with the firefighters in other departments.

Our application of Hudson to the facts of this case convinces us that the firefighters should remain in their existing units. In reaching this result, we recognize that the FMBA has emphasized that the special status normally associated with their profession mandates placement in a unit composed exclusively of firefighters or, at least, that firefighters be given an option to choose separation. The FMBA advances strong policy considerations to support their position. However, the Legislation has not precluded mixed units of firefighters and non-firefighters or provided for a firefighters' option.[1/] See Hudson, supra at 115-116. Accordingly, based on our application of Hudson to the facts of this case and the statute as written, we dismiss the two petitions.[2/]

ORDER

The Petitions for Certification of Public Employee Representative are dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chariman Mastriani, Commissioners Johnson, Reid and Wenzler voted in favor of this decision. Commissioner Smith abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986

1/ See N.J.S.A. 34:13A-5.3. (The Act precludes police from being in a unit with non-police, but there is no restriction with respect to firefighters); N.J.S.A. 34:13A-15 (interest arbitration is available only to those firefighting employees in units "exclusively comprised of firefighting employees"); N.J.S.A. 34:13A-6(d) (Act has provided for professional and craft employee option to choose separate unit).

2/ In view of this determination, we need not decide the other issues raised. In particular, we note that the Association did not petition to represent in a single unit those comparatively few titles not already represented. See City of East Orange, P.E.R.C. No. 84-101, 10 NJPER 175 (¶15086 1984).

H.O. NO. 86-1

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
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-and-

NEW JERSEY STATE FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION,

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COMMUNICATIONS WORKERS OF AMERICA, LOCAL 1037 & LOCAL 195, IFPTE,

Intervenors.

Docket No. RO-83-102

SYNOPSIS

A Commission Hearing Officer recommends that the Commission dismiss petitions for severance of firefighters from various, extant, mixed units of firefighters and non-firefighter State employees. The Hearing Officer determined that: (1) the record

does not indicate that employees in the petitioned-for units enjoyed a clearly superior community of interest as measured against the community of interest which exists in the present units; (2) there has existed for at least a decade a stable collective negotiations relationship in the mixed units involved herein; and (3) the majority representatives of the extant, mixed units have provided adequate representation to firefighters. Accordingly, under the standards enunicated by the Commission in In re County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶15059 1984), the Hearing Officer concluded, based upon all the circumstances of this matter, "...that labor stability, as evidenced by a long history of successful negotiations and adequate representation, would be better served by their (firefighters) continued inclusion..." in the existing, mixed units.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception 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.

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Petitioner, Docket No. RO-83-102

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COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1037 & LOCAL 195, IFPTE,

Intervenors.

Appearances:

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(Matthew T. Rinaldo, Esq. and
John L. Maddalena, Esq.)

For the Intervenor CWA
Steven P. Weissman, Esq.

For the Intervenor IFPTE, Local 195
Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Esq.)

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Two Petitions for Certification of Public Employee Representative were filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 1, 1982, by the New Jersey State Firemen's Mutual Benevolent Association (hereinafter the "Petitioner" or the "FMBA"). By its Petitions, the FMBA seeks to represent two separate collective negotiations units, one supervisory and the other nonsupervisory, consisting of ten classifications of employees of the State of New Jersey (hereinafter the "State"). Currently, the employees in these classifications are included in two units represented by the Communications Workers of America, Local 1037 (hereinafter the "CWA") and in two units represented by Local 195, IFPTE (hereinafter "Local 195").[1/] Both

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1/ The Petitioner describes the units sought as "Firefighting personnel in supervisory positions," in inter alia, Departments of Environmental Protection and Human Services

(Footnote continued on next page)

the CWA and IFPTE sought to intervene in this matter and were each granted intervenor status.

The Petitioner urges that separate supervisory and nonsupervisory firefighter units are necessary in order to properly effectuate the rights of firefighting employees under the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (hereinafter "Act"). The State, CWA and Local 195 contend that the petitions should be dismissed because severance is inappropriate under longstanding Commission and court precedent.

Pursuant to a Notice of Hearing dated January 18, 1983, hearings were held before Hearing Officer Charles A. Tadduni on July

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(Footnote continued from previous page)
(RO-83-101) and "Firefighting personnel in non-supervisory positions," in inter alia, the Departments of Environmental Protection and Human Services (RO-83-102). It was stipulated that ten classifications of personnel are involved in the two Petitions, as follows: Supervisory Unit -- State Fire Warden, Supervising Forester (Fire), Principal Forester (Fire), Deputy Fire Marshall & Institution Fire Chief; Nonsupervisory Unit -- Senior Forester (Fire), Assistant Forester (Fire), Field Section Fire Warden, Inspector Fire Safety & Assistant Institution Fire Chief. (See 1 Tr. 9 and 3 Tr. 6). It was also stipulated that the foregoing ten classifications in issue are included in negotiations units as follows: Senior Forester (Fire) and Assistant Forester (Fire) are in the CWA Professional Unit; Principal Forester (Fire) and Institution Fire Chief are in the CWA Primary Level Supervisors Unit; Field Section Fire Warden is in the Local 195 Operations, Maintenance and Services Unit; Inspector Fire Safety and Assistant Institution Fire Chief are in the Local 195 Inspection and Security Unit; the classifications of State Fire Warden, Deputy Fire Marshall and Supervising Forester (Fire) are in no existing collective negotiations units (1 Tr. 11, 12).

12 and September 21, 1983 and May 14, 15, 16, 17, 18 and June 5, and 13, 1984. All parties had an opportunity to examine and cross-examine witnesses and present relevant evidence. All parties filed post-hearing briefs, the last of which was received October 3, 1984.

POSITIONS OF THE PARTIES

By its Petitions, the FMBA seeks to remove from four extant, firefighter/nonfirefighter units, the various firefighter classifications now situated in those CWA and IFPTE units (and they seek three additional firefighter classification which are presently unrepresented) and to secure two new negotiations units comprised as follows: (a) all nonsupervisory firefighters employed by the State of New Jersey; and (b) all supervisory firefighters employed by the State of New Jersey. The FMBA bases its request for these units upon the following contentions: (1) firefighters have no community of interest with employees in the units where they are presently situated; (2) firefighters have a unique community of interest among themselves; (3) firefighters have not received responsible representation from their present majority representatives: (a) firefighters, as a general class of State employees, have not been treated consistently, as the various firefighter classifications are presently spread over four State employee negotiations units; (b) firefighters have not had their "special problems" addressed by

their majority representative -- rather, their problems have been "submerged" into the larger concerns of the broad-based State employee negotiations units; and (c) firefighters have a conflict of interest with other unit employees.

The State of New Jersey contends that forest firefighters have a strong community of interest with foresters; that the forest firefighters are part of an integrally related whole which is charged with protecting our parks and forests; and that foresters and forest firefighters share common goals and working conditions and facilities. The State argues that there is a long and stable history of negotiations of firefighters in the extant units and that the record simply does not indicate that firefighters have not received responsible representation.

Further, the State maintains that the positions of State Firewarden, Supervising Forester (Fire) and Deputy Fire Marshall are managerial executive classifications and are not appropriate for inclusion in any unit. Additionally, the State argues that inclusion of these classifications in the supervisory unit would engender impermissible conflicts of interest. Finally, the State argues that the titles of Deputy Fire Marshall and Inspector Fire Safety are not firefighters within the meaning of the Act.

Both CWA and IFPTE contend they have each provided adequate representation to the firefighters in their respective units, that these firefighters share a community of interest with the

nonfirefighters in the extant units and that there has been a long history of stable and successful collective negotiations for these units. Further, these organizations note that they have processed grievances and assisted firefighters with various work-related problems through the years. IFPTE also maintains that the position of Assistant Institution Fire Chief is not a firefighter within the meaning of the Act.

Based upon the foregoing, it appears that three issues are raised for determination herein: (I) are the classifications of Assistant Institution Fire Chief, Deputy Fire Marshall and Inspector/Fire Safety firefighters within the meaning of the Act? (II) are the positions State Fire Warden, Supervising Forester (Fire) and Deputy Fire Marshall managerial executive classifications; if not, are impermissible conflicts of interest generated by the inclusion of any of those positions in the supervisory collective negotiations unit? (III) are firefighters who are employed by the State of New Jersey and whose employment classifications are currently situated in broad-based, extant negotiations units -- under all the circumstances of this case -- entitled to sever from their current units and form a de novo unit comprised exclusively of all firefighting employees of the State of New Jersey?

FINDINGS OF FACT

1. The State of New Jersey is a public employer within the meaning of the Act, is subject to its provisions and is the

employer of the employees who are the subject of these petitions.

2. The New Jersey State Firemen's Mutual Benevolent Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The Communications Workers of America and its several locals are public employee representatives within the meaning of the Act and are subject to its provisions.

4. Local 195, IFPTE is a public employee representative within the meaning of the Act and is subject to its provisions.

5. The petitioned-for units appear to include all of the firefighters employed by the State of New Jersey. There are approximately 60 employees in the petitioned-for nonsupervisory unit and 25 employees in the supervisory unit.

6. The petitioned-for employees are situated within three separate departments of the State: Environmental Protection (Bureau of Forest Fire Management), Human Services and Community Affairs.

7. The firefighter issue -- All of the employees in the positions being sought by Petitioner perform firefighting functions. Employees in the positions State Fire Warden, Supervising Forester (Fire), Principal Forester (Fire), Senior Forester (Fire), Assistant Forester (Fire) and Field Section Fire Warden are employed in the Department of Environmental Protection

(Bureau of Forest Fire Management) and are engaged in fighting forest fires. This activity consists of: (1) pre-suppression work -- inspection to identify potential fire hazards, elimination of conditions conducive to fire (controlled woodland burns) and preparations to suppress fire (preparation of equipment, training); (2) suppression work -- the act of extinguishing an on-going fire; (3) post-suppression work -- investigation into the causes of a fire and the specific behavior of a fire. These employees are trained in the science of firefighting (2 Tr. 20; 3 Tr. 77-79, 82, 88-90, 94, 95).

Employees in the classifications of Instutition Fire Chief and Assistant Institution Fire Chief are employed in the Department of Human Services and are principally located on the premises of very large State institutions.[2/] These employees are engaged in firefighting activity on the institution premises, chiefly presuppression and suppression work. These employees are trained in the science of firefighting (2 Tr. 4-11, 48, 49, 80, 81, 84, 112, 113, 132, 4 Tr. 52-54).

Employees in the classifications of Deputy Fire Marshall and Inspector Fire Safety are employed in the Department of

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2/ These premises often contain numerous buildings and hundreds of acres of woodlands and fields and are in comparatively remote areas of the State.

Community Affairs and are engaged in firefighting activity. These employees work for the State Fire Marshall. The Inspector Fire Safety title is the entry level position in the Fire Marshall sequence. The Deputy Fire Marshall is a promotional position from the Inspector position. These employees are chiefly engaged in presuppression and post-suppression work and occasionally become involved in actual fire suppression work. The job description for the Inspector Fire Safety (J7) requires that candidates have three years of firefighting experience in a paid or volunteer fire department. The employees in these positions must be trained in the science of firefighting in order to properly do this job. These employees are charged with conducting fire code compliance inspections of all large State owned, leased and/or occupied facilities, both during and after construction of those facilities, in order to insure maximum fire protection. They also investigate the causes of fires at such State facilities and at various other facilities around the State (for example, at amusement parks which are licensed by the State). These employees have fire turnout gear and wear that gear when performing actual fire suppression work or investigations at recently controlled fire scenes. Inspectors and Deputies train personnel at various State facilities in fire prevention and fire suppression techniques (3 Tr 17; see generally, the testimony of the State Fire Marshall).

8. The managerial executive and conflict of interest issues -- The record provides no factual basis to indicate that the

Deputy Fire Marshall is a managerial executive. The Office of the State Fire Marshall is relatively small and the Fire Marshall maintains relatively direct control over the entire operation.

The State Forest Fire Warden (or State Fire Warden) is the head of the forest firefighting service in the State. The State Fire Warden reports to the Assistant Director of the Division of Parks and Forests; above that are the following: Assistant Commissioner for Parks and Forests, Commissioner of Environmental Protection and the Governor.

The personnel reporting to the State Fire Warden are, in order: Supervising Forester (Fire), Principal Forester (Fire), Senior Forester (Fire) and Assistant Forester (Fire). The structure and operation of the Bureau is paramilitary in nature.

There are three Supervising Forester (Fire) positions. They work in the State Fire Warden's Office in Trenton. They function as Chief Assistants to the Warden, each with responsibility for a particular area: (a) administration; (b) equipment purchase and management; and (c) operations (currently vacant). They each divise objectives and plans (in accordance with assignments from the Warden) for their particular areas and then take them to the Warden for discussion, alteration and eventual approval for implementation. When the Supervising Forester (Fire)/operations position has been vacant, the Warden has performed evaluations of Principal Foresters (Fire). However, when that slot (Supervising

Forester/Fire) is filled, the person in that position would evaluate Principal Foresters (Fire) and become involved in all disciplinary matters within the Bureau. When the Warden is unavailable for duty, one of the Supervising Foresters (Fire) would assume command of the Bureau.

Most of the policies affecting the Bureau are developed at the level of the Department of Environmental Protection. The Warden makes decisions concerning internal Bureau policies.

* * * *

The severance/unit structure issue -- In considering the severance/unit structure issue raised herein, three broad factors are implicated: (a) community of interest; (b) length and stability of the negotiations relationship; and (c) adequacy of representation.

9. Community of interest -- The community of interest issue is presented by the parties from two perspectives: the Petitioner FMBA cites the strong community of interest among the various firefighting positions petitioned-for; the State and the Intervenors focus upon the broad community of interest elements which the various firefighting employees share with the non-firefighting employee members of their present units. Both sides present compelling arguments.

The record shows that the petitioned-for firefighting employees perform work of a similar overall nature -- they fight

fires by doing tasks in the pre-suppression, suppression and post-suppression aspects of firefighting. They have similar basic training and they use similar -- and in many cases identical -- kinds of equipment. The jobs which they perform regularly entail a relatively high risk of injury. The various classifications petitioned-for occasionally will work cooperatively in fire suppression or fire prevention activities. All of the petitioned-for employees belong to the Police and Fire Employee Retirement System. Non-firefighting employees are in the Public Employees Retirement System. Finally, within their own separate negotiations unit, firefighting employees would be entitled to binding interest arbitration when their contract negotiations reached impasse.

The State and the Intervenors CWA & Local 195 focus upon the elements of community of interest which follow hereinbelow. The petitioned-for employees fall into three general groupings: forest firefighters, institution firefighters and fire inspectors. Each group is located within a separate department of the State: Environmental Protection, Human Services and Community Affairs, respectively. Each group interacts extensively, on a job-related basis, with other employees from their respective departments -- and does so far more frequently than they interact with employees from another of the firefighter groups.

Thus, forest forefighters interact with foresters quite often -- foresters assist forest firefighters with the latter's

prescribed burning program; forest firefighters assist foresters with tree planting, timber inventory and timber sales. During the fighting of forest fires, foresters render some, albeit limited, assistance to forest firefighters. The foresters and forest firefighters often work at the same locations and share physical facilities and equipment. At levels higher than their respective Bureaus, these two groups share a common supervisory hierarchy. To a degree, their training and backgrounds are similar.

Institution firefighters also share physical facilities and some equipment with non-firefighting employees in their departments. At higher levels, the institution firefighters and non-firefighting employees share a common supervisory hierarchy. Further, the institution firefighters raise and train "volunteer" fire companies -- comprised of employees working at those large institutions where the institution firefighters are situated. Depending upon the size of the fire, it often is this amalgamation of professional firefighters and non-firefighter employees which respond to and suppress fires at these large State facilities.

Finally, the fire inspector employees also have a high degree of interaction with other kinds of inspectors who are situated within the Department of Community Affairs -- specifically, the electrical inspectors, plumbing inspectors and building inspectors. These employees coordinate the various inspections and licensing activities and attempt to "dovetail" and compliment each

other's work. To a degree, their training and qualifications are similar and, at higher levels, they share a common supervisory hierarchy.

10. Length and stability of negotiations relationship -- Stuart Reichman, then of the State's Office of Employee Relations, testified without contradiction regarding the collective negotiations history involving State employees, dating back to the early 1960's, and the historical development of State-wide horizontal units (7 Tr. 22, 24, 67-69). The oldest contracts placed in evidence were those involving the Local 195 Operations, Maintenance and Services Unit, the earliest contract commencing in May 1972 and the most recent contract expiring in June 1986 (see J-1, E-3, C-32, C-33, C-34, C-37 & C-38). Also, the Local 195 Inspection and Security Unit contracts commenced in May 1973 and have continued to date (see E-4, C-35, & C-36).[3/] The contracts entered into between the State and CSA/SEA, the predecessor to CWA, commenced in April 1976 and continued to June 1981 when CSA/SEA was replaced by CWA as the collective negotiations representative (7 Tr. 14-20) for several State employee negotiations units. The earliest CSA/SEA contracts covered two separate units, Professional and Primary Level Supervisors (C-26 through C-31). These same two units

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3/ The Local 195 units contain several thousand employees.

have continued to exist under the aegis of CWA representation since July 1981 (J-2, J-3, I-17 & I-18). CWA also represents employees in a unit of Higher Level Supervisors as evidenced by J-4 and C-39, commencing in July 1981. CWA also currently represents a unit of Administrative & Clerical Services employees as evidenced by C-45. There was also placed in evidence all current contracts between the State and other public employee representatives not involved in the instant proceeding, all of which are State-wide units (C-40 through C-44, C-46 & C-47).[4/] According to the testimony of Reichman, the State opted for functionally broad-based, horizontal units based on a State-wide community of interest and these unit positions were adopted by the Commission and the courts. Reichman also testified that the State has never refused to negotiate for a particular sub-group of employees because the benefits would not be extended to all other State employees or all other unit employees (7 Tr. 42). The mixed units, into which the ten classifications herein involved fall, have existed for many years during which the parties (State, CSA/SEA, CWA & IFPTE) have negotiated, executed and administered successfully the numerous contracts referenced above.

11. Adequacy of representation (FMBA) -- The Petitioner FMBA alleges that the incumbent representatives of the units wherein

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4/ There are approximately 33,000 employees in the four CWA units broken down as follows: Administrative & Clerical -- 13,000; Professional -- 10,000; Primary Supervisory -- 8,000; Higher Supervisory -- 2,000.

the petitioned-for firefighters are situated have not provided the firefighters with "responsible representation." In support of its claims of inadequate representation, the Petitioner cites the following: (a) the collective negotiations contracts between the State and CWA fail to list the firefighter variant of the forester title; (b) after the CWA first became the majority representative of the professional unit, employees in the Assistant Forester (Fire) series were split over two CWA local unions for no apparent reason; (c) CWA failed to properly represent the interests of forest firefighters during the 1982 layoffs and bumping among State employees. Specifically, Petitioner notes that CWA supported the right of foresters to bump into the ranks of forest firefighters; that CWA representatives conducted some pre-layoff meetings and circulated seniority lists among foresters in order to help them prepare for the layoffs and forest firefighters were not so treated; and finally, that the actual bumping interviews were too short, too abrupt and required the firefighters to make decisions with far reaching ramifications on the spur of the moment. And (d) that the Assistant Institute Fire Chiefs are on NL status ("no limit" to the number of weekly work hours), that these employees often work 48 hours per week without being paid overtime therefor (and other unit employees are paid overtime after having worked for 35 hours per week) and that Local 195 declined to help them with this problem.

The collective negotiations predecessor to CWA was CSA/SEA, which represented employees in two units: Professional and Primary

Level Supervisors, supra. This representation continued through June 1981 when CWA replaced CSA/SEA as the collective negotiations representative of the aforementioned negotiations units. There was no negative evidence adduced indicating any inadequacy of representation or incidents of unfair representation by CSA/SEA covering the period April 1976 through June 1981.

12. Adequacy of representation (CWA) -- The testimony of Stuart Reichman establishes that it has long been the practice of the State and the majority representatives of its various negotiations units not to list variant titles in [such as Assistant Forester (Fire)] the title appendix to any of the State collective negotiations agreements.

With regard to the initial assignment of Assistant Foresters (Fire) to two different CWA locals, the CWA notes that in its first year as the majority representative of four major, State employee negotiations units (containing over 30,000 employees), it spent a large amount of time attempting to establish an efficient organizational structure and communications base to provide representational services to these employees. The union had difficulty in securing accurate information from the State in this endeavor and concedes that as a result, there may have been some confusion as to which Locals represented (or should have represented) various employee groupings. However, the record further shows that this inconsistency was eventually corrected and

that in any case, during the time that Assisant Foresters (Fire) were spread over two locals, all of these employees were made aware of which locals represented them. Further, the record does not indicate that any employee was unable to obtain representation for any job related problem.

With regard to the 1982 layoffs and bumping and the adequacy of representation provided by CWA to firefighters, the Petitioner's presentation on this issue consisted chiefly of testimony from five employees of the Bureau of Forest Fire Management in the Department of Enviornmental Protection: John Marston, Walter J. Earlin, Horace A. Soames, Jr., Carl E. Owen and James T. Gowdy. Uniformly, these employees testified regarding their discontent with the position taken by CWA in the "bumping" procedure which commenced in September 1982. More specifically, they were upset that CWA supported a bumping procedure which enabled Foresters to bump Foresters (Fire). The Foresters were particularly upset by this because it enabled a non-firefighter to bump a firefighter. The firefighters argued that this circumstance could jeopardize their safety, in the event that an untrained, non-firefighter was engaged in fighting a fire alongside a firefighter; fighting a fire is dangerous enough, they reasoned, but doing it with untrained personnel is simply foolish.

However, the CWA, principally through the testimony of Representative Scott, clearly set forth the reasons for its position

on bumping: in assessing what is best for the overall interests of the unit in general, the CWA concluded that it should (and does) generally support broad bumping rights in order to insure that more senior employees will not be laid off. Further, CWA noted that there had previously been lateral transfers between employees in the Forestry Bureau and Forest Fire Bureau and that because of certain similarities in their Civil Service job requirements, bumping, from Forestry to Forest Fire and vice-versa, was possible. Finally, CWA indicates that it regrets that the bumping rights issue created such a hostile reaction among the firefighters, but it notes that during layoffs unions must make difficult choices, and it did so in these circumstances. Finally, CWA notes that forest firefighters were not alone in being bumped -- it was a massive procedure going on throughout State government and affecting, both positively and negatively, numerous employees in many varied job categories. (4 Tr. 160, 161, 164. 5 Tr. 46-48, 65-67, 79-81, 135-139, 148-157. 6 Tr. 69-70).

With regard to the meetings which it conducted to advise Forestry Bureau employees about layoff procedures, CWA notes that it was the Bureau employees, not CWA, which initiated those meetings. Further, the CWA representatives who conducted the meetings and provided the senority lists to representatives of the forestry employees told those local representatives to circulate the lists among other employees at their various work locations.

While the Foresters (Fire) objected to the actual telephone bumping interviews [5/] these were procedures for which CWA was not responsible -- they were totally within the control of the Civil Service Commission. CWA acted to insure that a CWA representative was on the line to observe the process in order to insure that it was properly conducted (In fact, it was. 4 Tr. 160-161) and to advise and answer appropriate questions from the employees (9 Tr. 4-17).

Representative Scott did everything possible under the circumstances to protect the rights of employees affected by the layoff and bumping -- he provided written information, conducted meetings, participated in the telephone bumping interviews and advised employees of their appeal rights (9 TR. 8, 17). [6/]

The record indicates that CWA's activities on behalf of all State employees and on behalf of Department of Environmental Protection employees resulted in tangible benefits which accrued to firefighters as well as non-firefighter State employees. CWA fought to reduce the funding cuts which led to the layoffs, and

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5/ These were interviews conducted by a Civil Service employee who called the employee who was being bumped with options for bumping other, less senior employees or being laid off. A CWA representative and a representative from the State Office of Employee Relations were also on the line.

6/ The record indicated that one employee did grieve his bump and transfer on his own and prevailed. However, that employee never sought CWA assistance.

established a medical surveillance program to monitor the health of employees engaged in hazardous jobs (6 Tr. 4-121).

CWA has established an effective communications network with its constituent employees -- it surveys unit members for contract proposals and conducts meetings with unit employees at or near their work locales. It sends numerous publications to unit employees. Petitioner's witnesses Marston and Dove acknowledged that no firefighter (or other unit employee) has been denied membership in CWA; firefighter Marston testified that he has regularly received literature and notices of union meetings from CWA, that he has been allowed to vote in union elections and that contract proposals have been discussed at union meetings (4 Tr. 135-139, 155-159, 172-173).

Further, CWA Representative Scott assisted two forest firefighters (Detrick and Betten) with job related problems. CWA Local President Hopkins assisted forest firefighter Hockenberry in successfully resolving a pension benefit problem and assisted forest firefighter Rushing (and his private counsel) with a Civil Service termination appeal (4 Tr. 158-159; 5 Tr. 21-23).

There is no testimony in this record which even remotely suggested that CWA was ever approached for help by a forest firefighter and declined to give it. In fact, there is no evidence in this record which indicates that there was ever a time when CWA was aware of a specific problem which firefighters were having and then failed to act upon it.

13. Adequacy of representation (Local 195) -- Local 195 Business Agent, D. R. Philippi, testified affirmatively and without contradiction that he regularly communicates with officers, stewards, unit members and often non-members through the use of a newsletter and other literature; that contract negotiations are based upon surveys of the presidents of the 40 chapters in Local 195; that they regularly publicize and conduct chapter meetings and that Local 195 has never refused to process a grievance filed by a Field Section Fire Warden or an Assistant Institution Fire Chief, firefighter classifications represented by Local 195 (6 Tr. 122-126, 129). Further, Philippi testified concerning his and Local 195's efforts to affect an improvement in the situation of Assistant Institution Fire Chiefs (due to their "NL" status) -- the position was eventually upgraded and received a commensurate increase in salary (6 Tr. 120-130).

There was no testimony in the record which indicated that Local 195 has refused to process a grievance or assist a unit member with an employment related problem.

ANALYSIS AND CONCLUSIONS OF LAW

The firefighter issue -- N.J.S.A. 34:13A-14 states:

> 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 states:
>
> "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.

These are the introductory paragraphs to the interest arbitration section of the Act (Chapter 85). Other than the references made to firefighters in the Chapter 85 sections of the Act, there is no specific definition in the Act of firefighters and there are no statutory provisions concerning standards for firefighter units. However, several decisions may serve as guidelines for these issues.

In In re City of Plainfield, D.R. No. 82-39, 8 NJPER 158 (¶13068 1982), aff'g H.O. No. 82-5, 7 NJPER 525 (¶12232 1981), Hearing Officer Arnold H. Zudick stated:

> 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. 20/ ... that they fight fires [is] evidenced by the fact that they have pulled fire hose, raised ladders and occasionally sprayed water on fires.

20/ See In re Camden County, H.O. No. 82-3, 7 NJPER 491 (¶12218 1981); In re City of Pembroke Pines, 4 FPER 329 (¶4174 1978), Cf. In re City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶12002 1980).

Plainfield, supra, at 527.

In In re City of Hackensack, D.R. No. 79-27, 5 NJPER 150 (¶10085 1979), the Director of Representation clarified a unit of uniformed firefighters to include the classification of fire inspector. The City of Hackensack opposed the clarification contending, inter alia, that fire inspectors lacked the requisite community of interest to be included in a unit of uniformed firefighters. The Director found that training for fire inspectors and uniformed firefighters was similar, that fire inspectors perform such tasks as building fire code inspections, authorizing the issuance of licenses and permits and the conduct of arson investigations. The Director noted that tasks associated with fire prevention -- various inspections, investigations, etc. -- are elements of the broad process of firefighting; the duties of a firefighter encompass more than answering calls and assisting in extinguishing fires. Thus, the Director concluded that firefighters and fire inspectors are engaged in different aspects of firefighting. The Director further concluded that fire inspectors perform firefighting functions and that they share a community of interest with uniformed firefighters. Accordingly, the firefighters' unit was clarified as including fire inspectors.

Based upon the instant record, it is clear that Deputy Fire Marshalls and Inspectors Fire Safety perform fire code building inspections -- both during and after the completion of construction -- issue related licenses and permits, conduct fire investigations in the aftermath of a fire and, as the Fire Marshall made clear in his testimony, he deems it to be part of their responsibilities to participate in the extinguishing of fires when they arrive upon the scene of any working fire. Accordingly, the undersigned concludes that Deputy Fire Marshalls and Inspectors Fire Saftey are firefighters within the meaning of the Act.

The record in this matter shows beyond cavil that Assistant Institution Fire Chiefs perform firefighting functions -- they extinguish ongoing fires, perform fire inspections and train employees and residents of their various State facilities in fire prevention and fire suppression techniques. Accordingly, the undersigned concludes that Assistant Institution Fire Chiefs are firefighters within the meaning of the Act.

The managerial executive issue -- N.J.S.A. 34:13A-3(f) defines managerial executives as those "...persons who formulate management policies and practices and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district." N.J.S.A.

34:13A-5.3 excludes managerial executives from the protections and rights afforded by the Act to public employees.

In In re Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507 (¶11259 1980) aff'g D.R. No. 82-32, 6 NJPER 198 (¶11097 1980), the Commission, applying the definition of managerial executive contained in §3(f), determined:

> A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgement sufficient to affect broadly the organization's purposes or its means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. Montvale, supra, at 509.

Deputy Fire Marshalls are not involved in either policy making or policy implementation. Accordingly, the Hearing Officer concludes that the Deputy Fire Marshall position is not a managerial executive within the meaning of the Act.

The State Forest Fire Warden is involved in policy making and policy implementation for the Forest Firefighting Bureau in the Department of Environmental Protection. Accordingly, the Hearing

Officer concludes that the State Forest Fire Warden is a managerial executive within the meaning of the Act and should not be included in any negotiations unit.

The Supervising Foresters (Fire) act as assistants to the State Forest Fire Warden. The do not have authority to make final decisions regarding Bureau policies. Decisions concerning policy are made either higher up within the Department of Environmental Protection or by the State Forest Fire Warden. The Supervising Foresters (Fire) must first clear objectives and plans which they draft with the State Forest Fire Warden. Considering their functions, their position within the overall departmental hierachy and the extent of their discretion, the Hearing Officer concludes that Supervising Foresters (Fire) are not managerial executives within the meaning of the Act.

The conflict of interest issue -- In Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971), the Supreme Court examined the factors attendant upon the structuring of negotiations units consistent with the purposes of the Act. The Court stated:

> If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present. While a conflict of interest which is de minimis or peripheral may

> in certain circumstances be tolerable, any conflict of greater substance must be deemed opposed to the public interest. Wilton, supra at 425.

The proposed supervisory unit includes both the Supervising Forester (Fire) and the Principal Forester (Fire). The inclusion of both these titles in one unit raises the potential for a substantial conflict of interest between the employees in those positions. The Supervising Foresters (Fire) periodically assume command of the Bureau when the State Forest Fire Warden is unavailable for duty. The Supervising Forester (Fire) position is charged with the responsibility of evaluating the Principal Forester (Fire) and is involved in all Bureau disciplinary matters. These activities of the Supervising Forester (Fire) classification, within the paramilitary setting of the Bureau, engender the conflicts of interest which Wilton deemed inappropriate.

The severance/unit structure issue -- The Commission has been presented with severance questions on numerous occasions, in cases involving myraid circumstances and job classifications. An examination of those decisions reveals -- unmistakably -- that the Commission's general position as regards severance requests is that they should be denied, absent some extraordinary circumstance.

In In re State of New Jersey and New Jersey State Nurses Assn., P.E.R.C. No. 68 (1972), aff'd, State of New Jersey v. Prof. Assn. of N.J. (hereinafter, "State/Prof. Assn.") the Commission set forth certain guidelines for establishing units:

> Given the policy considerations of this statute, the Commission believes that the characteristics of a particular profession should not be the determinant in establishing units for negotiations. If community of interest is equated with and limited to such characteristics, the stability and harmony which this Act was designed to promote are in jeopardy. Potentially, every recognized professional group would be segregated, presenting the Employer with multiplicity of units and the likelihood of attendant problems of competing demands, whipsawing, and continuous negotiations which, disregarding the Employer's inconvenience, are not judged to be in the public interest. Fragmentation to that degree cannot be justified on the ground that individual professional interests are so unique that they cannot be adequately represented in concert with others, especially in the absence of a determination that matters of a professional concern are in every instant negotiable as terms and conditions of employment.... The purpose of the Act will be better served if, when dealing with professional employees, the individual distinctions among the professions not be regarded as controlling, but rather the more elementary fact that they are simply professionals and on that basis alone to be distinguished from other groups of employees. State/Prof. Assn., supra, at 7.

Typically, a severance petition is presented by a subgroup of employees who claim to have unique responsibilities and attributes which warrant their separate representation. In In re South Plainfield Bd/Ed, P.E.R.C. No. 46 (1970), the Commission dismissed a petition filed by a group of nurses seeking to be severed from a larger unit comprised of teachers, nurses, guidance counselors and librarians. The Commission stated:

> The Commission concludes, under all the circumstances of this case, that it is not appropriate to permit the separation of nurses from the contract unit. It is not enough to observe that nurses enjoy a community of interest among themselves. Any group having common qualifications, duties and conditions of employment will meet this test. The issue is whether their interests are so distinct from those with whom they were formerly grouped as to negate a community of interest.... Under all the circumstances, the Commission concludes that the interests of the nurses are so closely related to the educational process that the factors distinguishing nurses from teachers are submerged in recognition of the broader community of interest shared by the two groups. Furthermore, in this case, the nurses have been included with the teachers for purposes of representation for approximately six years. This history of prior representation constitutes an additional factor determining their community of interest....
>
> It is axiomatic in labor relations that in determining an appropriate unit or in achieving an agreement, the specific wishes of each group may not always be satisfied. If the desires of each group of employees were to be given controlling weight complete chaos would result since, in any appropriate unit, there are groups whose interests are of some variance to the total complement of the unit and there are employees or categories of employees who do not want the designated representatives to represent them for purposes of collective negotiations... Were all such groups whose needs were not met permitted to obtain separate representation or none at all, the concepts of an appropriate unit for collective negotiations and the exclusivity of majority representation would soon disappear to be replaced by individual or group dealings. ...the existence of some dissatisfaction by numbers of the unit will not constitute a basis to separate or sever a dissatisfied group from an appropriate unit. (Citations omitted). So. Plainfield, supra, at 5-7.

In In re Jefferson Twp. Bd/Ed, P.E.R.C. No. 61 (1971), the petitioner sought to sever bus drivers from an extant negotiations unit comprised of teachers, department heads, specialists, nurses, secretaries, custodians, head custodians, cafeteria personnel, cafeteria manager, bus drivers and transportation coordinator. In dismissing the petition, the Commission stated:

> The issue is correctly stated to be the appropriateness of the bus driver unit sought by the Teamsters. However, that question does not turn solely on whether there exists a community of interest among bus drivers. Undoubtedly, there is a kind of common interest among those of any group who perform the same duties. But the unit issue here cannot be determined by simply measuring the common interests of drivers, one to another, and ignoring other material facts, namely, that the drivers are part of an existing unit which is not on its face inappropriate and which has been the subject of two successive collective negotiations agreements. The statute requires that in defining units the Commission give "due regard" to community of interest. But, consideration must also be given to legislative intent and that statutory purpose which is declared to be, among other things, the promotion of permanent employer-employee peace or as Justice Francis phrased it "...establishment and promotion of fair and harmonious employer- employee relations in the public service."
>
> 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. (Citations omitted). Jefferson, supra at 4.

In In re County of Essex, D.R. No. 83-2, 8 NJPER 460, (¶13216 1982), the petitioner sought to sever firemen and assistant fire chiefs from an extant, broad based unit of County employees. The petition was untimely filed and the County raised the time bar problem. The petitioner argued that there were "special circumstances" present in this case which warranted the relaxation of the Commission's timeliness rules. In dismissing the petition, the Director of Representation stated:

> In the instant matter, the undersigned notes that there is no claim of a lack of community of interest existing between other county employees and the claimed firefighter employees other than the availability of interest arbitration to firefighting employees when they are in units exclusively comprised of firefighting employees.
>
> There is nothing in the Interest Arbitration Statute that compels the exclusion of firefighting employees from units containing other municipal, county, or state employees. Essex, supra, at 462.

In In re County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114, (¶15059 1984), the Commission was presented with a case quite

similar to the case at bar: the petitioner sought to sever institutional firefighters and a fire captain from an extant, broad-based, county-wide unit comprised of non-supervisory blue collar and white collar County employees. The petitioner argued that the firefighters should be severed from the extant unit inasmuch as N.J.S.A. 34:13A-14 et seq., provided firefighters with the right to invoke interest arbitration and that having firefighters in a mixed, firefighter/non-firefighter unit precluded their enjoyment of this right. The County argued that N.J.S.A. 34:13A-14 et seq. contemplated that mixed units of firefighters and non-firefighters predating the passage of the interest arbitration statute would continue to be appropriate and that there was no record evidence of instability or inadequate representation justifying severance of these employees from the overall unit.

The Commission stated:

> ...it is this Commission's judgement 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, or a specific showing of instability or irresponsible representation in that unit....
>
> 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. (Citations omitted). Hudson, supra, at 115.

In Hudson, the Commission reviewed in considerable detail the legislative history of N.J.S.A. 34:13A-14 et seq. and concluded as follows:

> ...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. (Citation omitted). Hudson, supra, at 116.

While concluding that the interest arbitration statute did not automatically entitle firefighters to severance, the Commission determined that it was a powerful factor -- one which altered somewhat the traditional parameters by which severance petitions were evaluated. The Commisson stated:

> While the interest arbitration statute, standing alone, does not automatically entitle firefighters to be severed from an existing unit including non-firefighters, it is certainly a potent consideration in determining whether, under all the 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 firefighthers 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 adequancy 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. (Citations omitted). Hudson, supra, at 116.

When considering the community of interest factor as it relates to a request for severance, a comparative analysis approach is necessary as it is rare to find a community of interest with group A and none with group B. What is needed to give support to a severance request is a significantly greater community of interest among the employees in the severed unit as measured against the community of interest which exists in the present unit.

In the instant matter, the record simply does not indicate that there is a significantly greater community of interest in the petitioned-for firefighter units as measured against the community

of interest which exists in the broad-based State employee units where the firefighters are presently situated. While the Petitioner correctly points to the several community of interest elements embracing firefighters -- nature of work, high risk work, equipment and training, retirement system, etc, -- the State and the intervenors point to several powerful community of interest elements which presently exist in the broad-based units: a high degree of job interaction with non-firefighter/co-departmental employees, common supervisory hierarchy, common departmental work rules and working conditions, common work sites and shared work facilities and equipment. Further, the State and CWA point out that firefighters are not the only high-risk jobs in State service; there are several others within the broad-based units.

Accordingly, it is clear that the petitioned-for units do not possess a uniquely superior community of interest (over that of the present unit structure), which would clearly enhance "... the establishment and promotion of fair and harmonious employer-employee relations in the public service" [Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971)].

Further, in the opinion of the Hearing Officer, the evidence is conclusive that there has existed for at least a decade a stable collective negotiations relationship in the mixed units herein involved as indicated by the many successfully negotiated and administered collective negotiations agreements between the State and the majority representatives of the affected units. There is no

record evidence whatsover that the broad-based units have in any way been unstable; indeed, the record would suggest a blue pin-striped stability exists here. Thus, it appears clear that under the Jefferson Twp. and State/Professional Assn. and Hudson standards, supra, it would be inappropriate to sever the employees in the ten firefighting classifications herein involved from the broad-based units. To do so would unnecessarily fragment these units and disturb a proven stable relationship. The record is barren of any facts which suggest that the petitioned-for units would enhance labor stability.

With regard to the issue of adequacy of representation or unfair representation -- vis-a-vis firefighters -- by the majority representatives of the present units, it is clear beyond cavil that neither the CWA nor Local 195 have provided inadequate representation to firefighters.

On a broad basis -- unit-wide and/or State-wide -- both the CWA and Local 195 engage in numerous activities of benefit to all unit members and in some cases, all State employees, including firefighters. They have established effective communication networks to their unit members and regularly survey them for contract proposals. They regularly conduct local membership meetings where they attempt to address members' concerns. They shower employees -- both organization members and not -- with various publications.

Local 195 responded to firefighter members' concerns about their NL status. No evidence was elicited which indicated that Local 195 had been deficient in any way in its representation of firefighters.

With regard to the failure to list the Forester (Fire) variant in the State/CWA contract and the assignment of Foresters (Fire) to two different CWA locals, the Hearing Officer believes that the record satisfactorily explains both occurrences and concludes that neither event (either separately or taken together) supports claims of inadequate representation.

With regard to the CWA's representation of firefighters during the 1982 layoffs and bumping, the undersigned concludes that CWA's conduct vis-a-vis firefighters during these events is not supportive of the Petitioner's claims of inadequate representation.

The CWA exerted enormous efforts -- at high levels of State and National government and at the grass roots level -- to protect its employees and minimize the effects of budget cuts and layoffs upon them.

The one element of CWA's approach to the layoffs which caused the greatest concern to firefighters was its broad-based approach to bumping rights. CWA had legitimate, logical reasons for taking that position. The firefighters had reason to be unhappy with it; however, being unhappy with your union's position on an issue -- even such an important one as this -- is simply not

indicative of inadequate representation or unfair representation.7/

The Commission and the courts have consistently found no breach of the duty of fair representation where a collective negotiations representative has acted within the wide range of reasonableness permitted it and in good faith made certain concessions in order to obtain a larger gain for the entire unit. See, for example, In re PBA Local 119, P.E.R.C. No. 84-76, 10 NJPER 41 (1983); In re Hamilton Twp. Ed. Assn., P.E.R.C. NO. 79-20, 4 NJPER 476 (1978); Belen v. Woodbridge Twp. Bd. Ed., 142 N.J.Super. 486 (App. Div. 1976); Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953); Barton Branch Ltd. v. NLRB, 529 F.2d 793, 91 LRRM 2241 (7th Cir. 1976). Cf. In re FMBA Local No. 12, P.E.R.C. No. 82-65, 8 NJPER 98 (1982). Compare, In re Camden County, D.R. No. 82-14, 7 NJPER 631 (¶12283 1981).

CWA conducted meetings concerning the layoffs, they provided some advice and "presence" on behalf of employees during the Civil Service telephone interviews and advised affected employees of their appeal rights.

In the face of layoffs and bumping, there are legal limits as to what a bargaining agent can do. CWA did what it could under

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7/ The Hearing Officer notes that there is testimony in record of then on-going efforts to remove the firefighters from the

(Footnote continued on next page)

the circumstances -- it could not prevent the layoffs, as that was a managerial decision. As to the layoff/bumping procedure, that is largely within the domain of Civil Service. As a firefighter, regardless of who your majority representative was during that time, you would have been subject to layoffs and bumping.

During the three plus years it had been the majority representative of these units, CWA has provided individual assistance to several firefighters. During the layoffs, Representative Scott had a mistake concerning firefighter Owen's seniority corrected (9 Tr. 8, 17). Scott also assisted two other firefighters with job related problems. Local President Hopkins assisted another firefighter with a pension problem and another with a discharge. The record is replete with affirmative representational actions taken by CWA toward the unit generally and firefighters specifically.

Further, there is no indication in the record of any negative actions taken by either CWA or Local 195 vis-a-vis firefighters. There was never a denial of membership to firefighters -- indeed, there was a courting of firefighters (as any other employee would have been) to become members. Several

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(Footnote continued from previous page)
Forester sequence. Since the time of the hearing, the State has provided, via correspondence to the Hearing Officer and all parties, confirmation that this has indeed occurred.

firefighters were shop stewards in their respective unions. There was no indication that either union had ever refused to process a grievance for a firefighter. There was no indication in the record that either union was hostile toward their firefighter members. Finally, there was no showing in the record that firefighters had been prejudiced economically or otherwise by their inclusion in the mixed units or through their representation by CWA and Local 195. There was no showing that, as compared to other similarly situated employees -- in this State or in other states -- firefighters had been disadvantaged.

CONCLUSIONS AND RECOMMENDATIONS

The Hearing Officer has carefully considered and applied all of the severance factors set forth by the Commission for determining whether firefighters should be severed from a mixed unit. Hudson County, supra. The Hearing Officer has proceeded from the established presumption that firefighters should be severed from a mixed unit, as set forth in Hudson County.

However, the Hearing Officer is compelled to conclude that the instant record shows clearly "...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 (the firefighters) continued inclusion..." in the existing mixed units (Hudson, 10 NJPER at 116). All of the factors laid out

by the Commission in Hudson County for continued inclusion have been met, in particular, the lack of a clear separate community of interest among the employees who are the subject of the two petitions herein, the overwhelming adequacy of representation and the total absence of unfair representation affecting firefighters in the mixed units and, finally, the stable collective negotiations history of ten years or more duration.

Thus, the petitioned-for supervisory and non-supervisory units are inappropriate and the petitions should therefore be dismissed. 8/

Respectfully submitted

Charles A. Tadduni
Hearing Officer

Dated: August 27, 1985
Trenton, New Jersey

8/ In concluding this report, the Hearing Officer notes that this was a difficult result to reach. Firefighters around the State are traditionally represented in separate units by firefighters organizations. The Commission stated in Hudson, supra, that firefighters should be in separate units, absent a showing that labor stability would be better served by their inclusion in their extant unit.

The case was well litigated by all of the parties -- three days in prehearing and nine days of hearing; that the record is well-documented is an understatement. However, under the present state of the law in New Jersey, the Hearing Officer is constrained to recommend that these severance petitions be dismissed.