

P.E.R.C. NO. 87-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

Docket No. RO-85-26

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL #75,

Petitioner,

OVERBROOK EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a petition for certification of public employee representative filed by Local #75, Firemen's Mutual Benevolent Association. Local #75 sought to represent a negotiations unit of institutional firefighters employed by the County of Essex. The Commission finds, however, that these employees should be continued to be represented by the Overbrook Employees Association in a broad based unit of blue and white collar employees.

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Intervenor.

Appearances:

For the Public Employer, David Ben-Asher, County Counsel
(Elaine Hyman, Assistant County Counsel)

For the Petitioner, Rinaldo & Rinaldo, Esqs.
(Gerald J. Martin, of counsel)

For the Intervenor, Love & Randall, Esqs.
(John C. Love, of counsel)

DECISION AND ORDER

On September 24, 1984, Local #75, Firemen's Mutual Benevolent Association, Local #75 ("FMBA") filed a Petition for Certification of Public Employee Representative. The FMBA seeks to represent a negotiations unit of "institutional firefighters" employed by the County of Essex ("County"). The institutional firefighters are currently members of a broad-based unit of

approximately 1400 blue and white collar employees represented by the Overbrook Employees Association ("OEA").^{1/}

The FMBA, County and OEA filed statements of position.

The FMBA asserts the "institutional firefighters" should be removed from the existing broad-based unit and placed in a separate unit because these employees are "firefighters" within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., and do not share the same community of interest with employees in the broad-based unit. It also alleges that OEA's existing representation has been inadequate.

The County asserts that the petition should be dismissed because the employees are not "firefighters" and the existing broad-based unit is appropriate. The OEA also opposes severance.

On July 9, 1985, the Director of Representation issued a Notice of Hearing. On September 18 and 20, 1985, Hearing Officer Jonathon Roth conducted hearings. The FMBA and County examined witnesses, introduced exhibits and filed post-hearing briefs. OEA did not participate.

On October 1, 1986, the Hearing Officer recommended dismissal of the petition. H.O. No. 87-5, NJPER (¶)

^{1/} Processing of this petition was stayed while the Commission processed a representation petition filed by District 1199J, AFL-CIO, which sought to represent the broad-based unit. On November 16, 1984, following an election, the Commission certified OEA as collective negotiations representative for the broad-based unit and resumed processing this petition.

1986). He concluded that all of the petitioned-for employees were "firefighters," but that severance from the existing unit was not appropriate under the circumstances of the case because OEA and the County have a long history of stable negotiations and there was insufficient evidence to establish that OEA has inadequately represented the firefighters.

The Hearing Officer served his report on the parties and informed them that exceptions to his recommendation were due October 14, 1986. The parties did not file exceptions.

We have reviewed the record. The Hearing Officer's findings of fact (pp. 3-11) are accurate. We adopt and incorporate them here. Under all the circumstances of this case, we agree severance from the existing unit would not be appropriate. State of New Jersey, P.E.R.C. No. 86-98, 12 NJPER 206 (¶17081 1986), appeal pending App. Div. Dkt. No. A-3491-85T6; Cty. of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶15059 1984).

ORDER

The Petition for Certification of Public Employee Representative is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson and Wenzler voted in favor of this decision. Commissioner Smith was opposed. Commissioner Bertolino abstained. Commissioner Reid was not present.

DATED: Trenton, New Jersey
November 17, 1986
ISSUED: November 18, 1986

H.O. NO. 87-5

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

In the Matter of

COUNTY OF ESSEX,

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-and-

DOCKET NO. RO-85-26

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL #75,

Petitioner,

-and-

OVERBROOK EMPLOYEES ASSOCIATION,

Intervenor.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission finds that the County institutional firefighters and the assistant institutional fire chief employed at the Hospital Center are "firefighters". Like the firefighters in County of Hudson, P.E.R.C. No. 84-85, 10 NJPER 114 (¶ 15059 1984) and State of New Jersey, and FMBA and CWA, P.E.R.C. No. 86-98, 12 NJPER 206 (¶ 17081 1986), appeal pending App. Div. Dkt. No. A-3491-85T6, they should not be severed from a broad-based nonprofessional unit. The Hearing Officer found that they were adequately represented for many years in the existing unit and share a community of interest with other unit employees.

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.

H.O. NO. 87-5

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

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FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL #75,

DOCKET NO. RO-85-26

Petitioner,

-and-

OVERBROOK EMPLOYEES ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Elaine Hyman, Asst. County Counsel

For the Petitioner
Rinaldo and Rinaldo, Esqs.
(Gerald J. Martin, of counsel)

HEARING OFFICER'S RECOMMENDED REPORT AND DECISION

A Petition for Certification of Public Employee Representative ("Petition") was filed with the Public Employment Relations Commission ("Commission") on September 24, 1984 by Local #75, Firemen's Mutual Benevolent Association ("Petitioner" or "FMBA") seeking to represent a separate unit of approximately five institutional firefighters employed by the County of Essex ("County")

or "Employer") at its Hospitals.^{1/} The Petitioner seeks to remove the firefighters from a broad-based unit of approximately 1400 blue and white collar employees represented by Overbrook Employees Association ("OEA" or "Association"). The Petition was pended while the Commission processed another representation petition (Docket No. RO-85-25) filed by District 1199J, AFL-CIO seeking to represent the broad-based unit. On November 7, 1984, the Commission conducted an election among the blue and white collar employees (at which the ballots of the firefighters were challenged by the Commission pursuant to N.J.A.C. 19:11-9.2). On November 16, 1984, the Commission certified the OEA as the collective negotiations representative for all full-time and part-time white collar employees of the County in the Department of Health and Rehabilitation and resumed processing of the FMBA's petition.

The Petitioner seeks to remove the firefighters from the broad-based unit and form a separate negotiations unit of firefighters because the employees in the titles are allegedly firefighters within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") and do not share the same community of interest as employees in the broad-based unit. Petitioner also alleged that representation of employees in

^{1/} The original petition sought a unit of "assistant fire chiefs and firemen." At the hearing, the parties stipulated that the titles at issue are Assistant Institutional Fire Chief and Institutional Firefighter.

the proposed unit has been inadequate. The OEA objected in writing to an election in the proposed unit but did not otherwise participate in the processing of the Petition. The County opposed the Petition, alleging that the employees are not firefighters within the meaning of the Act, and even if the employees are firefighters, their severance from the unit is unwarranted because they have been adequately represented by the OEA and have sufficient community of interest with the employees in their existing unit. It also argued that certification of the FMBA as majority representative of the proposed unit would result in an undue fragmentation of bargaining units with which the County must negotiate.

On July 9, 1985, a Notice of Hearing was issued by the Director of Representation. On September 18 and 20, 1985, I held a hearing in this matter, at which time the parties had the opportunity to examine and cross-examine witnesses, present evidence and argue orally. Post hearing briefs were submitted by November 21, 1985.

Based upon the entire record, I find the following facts:

1. The County of Essex is a public employer within the meaning of the Act and employs those employees who are the subject of this Petition.

2. Local 75, Firemen's Mutual Benevolent Association and Overbrook Employees Association are employee representatives within the meaning of the Act.

3. The Petitioner seeks a secret ballot election to determine whether institutional firefighters and the assistant institutional fire chief wish to be represented in a separate unit. The County and the OEA refused to consent to an election and the former argued that the proposed unit is inappropriate.^{2/}

4. The four firefighters (excluding the fire chief) are employed by the County in the Department of Health and Rehabilitation at the Hospital and Geriatric Centers in Cedar Grove. The complex is comprised of more than 30 buildings which sit on several hundred acres (1T 22, 94). The fire house is a separate structure at the complex (1T 97), which houses two fire engines, one ambulance and a utility vehicle which is driven by institutional firefighters during fire safety inspections at the Center (1T 95). The firehouse does not have a bulletin board for employee notices. Bulletin boards are hung in various buildings at the complex.

The job description defines the institutional firefighter as one who "under direction, operates fire engines, fights and prevents fire" and performs "related work as required" (P-1). The assistant institutional fire chief "...drives and operates a fire truck and assists with varied types of fire administration and fire prevention work" and performs "related work as required" (P-2). The descriptions cite examples of work, including participating in fire

^{2/} During the early processing of this case, the OEA submitted a one sentence statement of position objecting to an election in the proposed unit (C-2).

drills, driving fire apparatus, using hoses, receiving fire alarms and performing rescue work. The assistant fire chief is expected to assist the Chief in training and assigning employees in fire fighting duties, in the handling of patients during a fire and in the prevention of fires. The only "requirement" listed in the institutional firefighter job description is an applicant's possession of a valid driver's license. The assistant institutional fire chief is required to have "two years experience in fire fighting and/or fire prevention work in a paid or volunteer fire unit" (P-2).

5. Since 1971, institutional firefighters and the assistant institutional fire chief have been included in the broad-based hospital unit of attendants, housekeepers, storehouse, clerical and other nonprofessional employees (1T 12, 19, 20). The titles first appeared in the recognition clause (by incorporation of an attached schedule) of the 1979-81 agreement between the OEA and the County (R-5). No party disputes that the titles have remained in the broad-based unit to the date of the hearing (See R-10). Since 1973, the OEA and the County executed a steady series of collective negotiations agreements and memoranda of agreement covering nonprofessional employees (R-1, 2, 3, 4, 5, 6, 10). On November 16, 1984, the OEA was certified as majority representative of the County's blue and white collar employees in the Health and Rehabilitation Department after an election conducted by the Commission (R-8, 9).

Richard Cirlincione is Assistant Director of Labor Relations for the County. From 1980-85 he was Assistant to the Department Director of the County's Department of Health and Rehabilitation and ruled on grievances filed by majority representatives on behalf of the Department employees (1T 7,8). He testified that five negotiations units represent the employees at the Centers. About 75 percent of the 1800 employees at complex are represented by the OEA, followed in numerically diminishing order by nurses, social workers, supervisors, and physicians and dentists in their separate negotiations units (1T 8, 9, 19).

7. The Division Director oversees the Hospital Center, which is sub-divided into eight sections, each of which is supervised by a section manager (1T 23). A section may contain one or more "units". All OEA negotiations unit employees are placed in a unit. "Fire and Ambulance" is one of five units in the Safety and Loss Prevention Section (R-7). In disciplinary cases, the head of a unit (e.g. fire chief) recommends warnings, suspensions, etc., to the section manager, who refers the matter to the Division Director. With respect to grievances, all matters are submitted to the Division Director at Step 1 (1T 29). The Center also has one personnel and payroll office.

8. Institutional firefighters have been trained as firefighters, have used firefighting equipment and machinery and have fought fires. Robert Daum has been an institutional firefighter since 1983. He submitted a resume of his training at

N.J. State Fire College and North Jersey Fire Training Center from 1977-1980 (P-5). In 1984 he earned a Fire Protection Inspector certificate at Essex County College. Daum also testified that another institutional firefighter had worked as a firefighter at an Air Force Base and that another, employed for 13 years at the Center, was a volunteer in the Verona Fire Department. The Assistant Institutional Fire Chief has been employed in that title at the Center for 33 years (2T 2). He previously had been a municipal firefighter for the City of Newark (2T 3).

The firefighters' work hours have changed over the past few years. Before autumn 1983, they had 42-hour work weeks (two 10-hour day shifts, off duty for 48 hours, two 14-hour night shifts, off duty for 72 hours). From about October 1983 until May 1984, the firefighters worked a shift of 24 hours on-duty and 72 hours off-duty. In May 1984, their schedules were changed to 8 hour shifts, often resulting in one person assigned to a shift (1T 104-106, 111). The firefighters wear uniforms and have fought fires at the complex (1T 97). Once they were faced with a large brush fire which required additional manpower from the Cedar Grove municipal fire department to extinguish the blaze (1T 120). Eleven volunteers are sometimes available to the firefighters in emergencies (1T 97-98).

The institutional firefighters conduct fire drills periodically among employees and patients (2T 9). They also inspect the facilities for fire hazards, maintain hoses, standpipes, and

extinguishers in proper condition and check the fire alarm systems (1T 97). The firefighters interact with other unit employees when they conduct inspections and drills at the Center (1T 53). They also preside over biweekly orientation classes for all hospital employees concerning fire safety (1T 53; 2T 45-46).

9. The Petitioner alleges that the OEA has not provided the firefighters adequate representation, principally when their work schedules were changed without notice to 8 hour shifts in May 1984. The employer does not dispute that it changed the work shifts (1T 59, 62). Daum testified that about one month after the change he complained about it to the OEA. He also testified that the shift change often resulted in only one firefighter on duty at the fire building for his entire shift. Daum once was injured while on duty and did not seek requisite medical attention until he was temporarily relieved by another firefighter. Cirlincione testified that if only one firefighter is on duty during a shift he is generally prohibited from leaving the premises (1T 61).

Petitioner submitted a copy of a typed letter from the "Fire Department Staff" to the OEA, essentially reciting their preference for the 42 hour schedule because it increased the number of employees assigned to each shift and was flexible enough to allow firefighters to have some holidays and weekends off duty. Erasures and/or strikeovers in the numerical month of the date on the letter prohibit me from setting any specific time in 1984 when this letter was mailed or delivered to the OEA (P-10).

petitioner also submitted a copy of a letter dated September 18, 1984 from the OEA President to the Division Director requesting that the firefighters' schedules revert back to the 24-hour on duty and 72-hour off duty shifts (P-6). The letter also requests that firefighters receive no fewer off-duty weekends than other unit employees and that the Director resolve the matter immediately because the change is a "contract violation." Finally, the President wrote that he attached a copy of a complaint from four firefighters concerning changes in work hours. The exhibit did not include any other document.

Firefighter Daum testified that no one in the fire department received the employer's response to P-6. When Daum asked the OEA President if he received a response to P-6, he answered that the County was still considering the issue (1T 230). On October 24, 1984, the four institutional firefighters and the assistant institutional fire chief sent another memorandum to the Hospital Director requesting a meeting with him concerning the schedule change to 8 hour shifts (P-7; 1T 109). Daum also testified that the firefighters received no response to P-7 (1T 10). A hand written notation on P-7 reads, "Follow-up letter December 21, 1984 still no reply." Daum explained that the firefighters sent a follow-up letter to P-7 to the Director.

Cirlincione testified that in 1984 the OEA filed a grievance concerning the change to 8 hour shifts, which it pursued through step two of the grievance procedure of the 1982-84

collective negotiations agreement (1T 59, 63-64 and see R-6, which incorporates almost all the terms of the 1979-81 agreement (R-5), including the grievance procedure). He denied the grievances. The FMBA did not rebut Cirlincione's testimony.

Petitioner also alleged that the firefighters were inadequately represented by the OEA after they complained about unpaid lunch hours. Daum testified that on August 23, 1985, the firefighters sent a memorandum to the OEA complaining about unpaid lunch hours (1T 116). Petitioner submitted a letter dated September 4, 1985 from the Assistant Director to the OEA President denying a group grievance seeking the firefighters' right to a paid lunch period (P-8). On September 10, 1985, the OEA President filed an appeal of the grievance on OEA letterhead stationery with the County Administrator. He alleged that the firefighters were treated differently than other employees in the unit in violation of the collective negotiations agreement. He concluded the typewritten memorandum by stating that unless the employer responded to the appeal within ten days, the Association would request that the matter proceed to arbitration (P-8 p. 2). (Petitioner also submitted another memorandum dated October 7, 1982 from the Division Director to the Fire Chief denying firefighter requests to leave the building during the lunch hour or receive extra compensation for remaining on the premises during that time (P-3).

The FMBA also alleged that the OEA inadequately represented the firefighters when it failed to respond to an April 16, 1984

employer memorandum posted on various bulletin boards at the hospital. The memorandum was sent from the Nursing Services Administrator to Training Instructors, Nurses and Supervisors stating that on April 23 the "Fire Unit will no longer be manned on the 11-7 shift" and that the Cedar Grove Municipal Fire Department will respond to all hospital alarms on that shift (P-4). P-4 also bears Daum's hand written notation stating "Recinded [sic] 4/27/84 by M. Duffy." Daum testified that Duffy issued a memorandum rescinding P-4 (1T part 2, 19). Petitioner submitted another memorandum dated April 25, 1984 from the Fire Chief to the employees rescinding P-4 (P-9). Daum further testified that he never filed a grievance with the OEA concerning the transference of any shift coverage to the Cedar Grove Fire Department (1T part 2, 23).

Dennis St. Onge is the Assistant Institutional Fire Chief. He testified that an OEA representative told him at a conference, held at Commission offices several years ago concerning another representation petition filed by the firefighters, that the Association did not care if the firefighters were severed from the broad-based unit (2T 5). When St. Onge was asked why the firefighters should be severed from the unit, he answered "...we're all professional firemen, the whole four of us. With the OEA, they just represent workers. They don't know anything about the fire department..." (2T 7).

ANALYSIS1. LOCAL #75, FMBA IS COMPOSED OF FIREFIGHTERS

In 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), the Hearing Officer defined "firefighter":

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.^{3/}

The facts in this case support a finding that institutional firefighters and the assistant institutional fire chief are firefighters within the meaning of the Act. Daum was trained extensively as a firefighter before and during his employ with the County. He has been trained to use firefighting equipment and has actually fought fires. The County did not dispute that other institutional firefighters have been employed elsewhere as firefighters or were volunteer firefighters in municipal departments. The assistant institutional fire chief was employed as a firefighter in the Newark Fire Department before he was hired by the County. The firefighters also conduct fire drills among employees and patients and regularly check various firefighting

^{3/} This definition was more recently adopted by Hearing Officers in County of Hudson ("Hudson"), H.O. No. 83-9, 9 NJPER 195 (¶ 14090 1983) and State of New Jersey and FMBA and CWA, Local 1037 and Local 195, IFPTE, H.O. 86-1, 11 NJPER 635 (¶ 16224 1985). Although the Commission affirmed these decisions in P.E.R.C. No. 84-85, 10 NJPER 114 (¶ 15059 1984) and P.E.R.C. No. 86-98, 12 NJPER 206 (¶ 17081 1986), appeal pending App. Div. Dkt. No. A-3491-85T6, respectively, it did not expressly approve the Hearing Officer's definition of "firefighter."

apparatus. Although the job description for institutional firefighter does not specifically require firefighting training, it cites examples of work an employee is expected to perform including participating in fire drills, driving fire apparatus, rescuing victims and taking "appropriate" action in response to fire alarms. The "examples" are de facto firefighter duties. Furthermore, the County has hired people who have been employed and professionally trained as firefighters. I conclude that both firefighter titles are within the meaning of the Act.

2. THE FIREFIGHTERS SHOULD NOT BE SEVERED FROM THE BROAD-BASED UNIT

What distinguishes the Commission's usual severance standard from that applied to firefighters and police officers is the public policy of the interest arbitration section of the Act.

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.

In Hudson, the Commission articulated the rationale for creating a new standard for severing firefighters from mixed units (Compare, e.g. Jefferson Twp. Bd. of Ed., P.E.R.C. No. 61 (1971) and State of New Jersey v. Prof. Assn. of N.J., Dept. of Educ., 64 N.J. 231 (1974):

...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. (Citations omitted). Hudson, 10 NJPER at 116.^{4/}

^{4/} The employer alleged that severance of the petitioned-for unit would result in an undue fragmentation of bargaining units. The Commission incorporates that policy consideration in its Hudson and State, FMBA and CWA decisions.

In Hudson, the Commission held that severance was inappropriate and 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 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.

Applying these factors to this case, I find that the OEA and the County have a long history of successful negotiations. Specifically, the parties have seven written negotiations agreements or memoranda of agreement covering the broad-based unit since 1973. Although the institutional firefighter and assistant institutional fire chief titles first appeared in the 1979-81 agreement, they have been included in the unit since 1971 or earlier.

The FMBA has alleged that the OEA has inadequately represented the firefighters. In West Milford Bd. of Ed., P.E.R.C. No. 56 (1971), the Commission stated: "The measure of fair representation is ultimately found at the negotiating table, in the administration of the negotiated agreement and in the processing of grievances." In County of Camden, D.R. No. 81-3, 6 NJPER 415 (¶ 11209 1980), the Director of Representation affirmed the hearing officer's recommendation by severing a group of registered nurses from a county-wide unit. The facts established that the incumbent organization failed to adequately process grievances filed by two

nurses; that it failed to adequately negotiate on behalf of the nurses that it represented and, in fact, attempted to conceal its actions from them; that the manner of the initial inclusion of the nurses in this county-wide unit was somewhat questionable; and that the employer consented to a separate unit of nurses. In reaching the decision to sever, the Director stated, with regard to the issue of inadequate grievance processing:

An organization which fails to advise employees that formal grievances, wherein requests have been made for binding arbitration, will not be submitted to arbitration and fails to advise employees of the reasons for its refusing to submit grievances to arbitration is acting in an arbitrary manner and is not affording responsible representation. Considering that one of the grievances was presented by the chief negotiator for the RPNU and the rejection of the further processing of the grievance occurred at the same time the parties were engaged in difficult negotiations, lead the undersigned to the reasonable presumption that the individual was being targeted for invidious representation because of the active disagreement that ensued between Council 10 and the RPNU. This circumstance is evidence of the degree of instability in the relationship existing between the RPNU, Council 10 and the County. [6 NJPER at 417].

With regard to the issue of inadequate representation of this subgroup, the Director held:

...Council 10 did not provide responsible representation when it changed the agreement reached between RPNU and the County without advising the RPNU of the changes and without responding to the RPNU's request to meet with Council 10. The fact that the County and RPNU representatives later succeeded in resolving the dispute in the absence of Council 10 participation reflects as well upon the instability of a relationship which includes Council 10, the RPNU and the County. [6 NJPER at 417].

In this case, the Petitioner's argument in favor of severance pales in comparison to the Director's argument in Camden, supra. The FMBA has not alleged that incumbent OEA has failed to adequately negotiate on behalf of firefighters or that it intentionally concealed any of its negotiations decisions from them. See Ford Motor Co. v. Huffman, 346 U.S. 330, 338 (1953), and Lawrence Twp. PBA Local 119, P.E.R.C. No. 84-71, 10 NJPER 41 (¶15023 1983). With respect to grievance processing, the Petitioner has not alleged that firefighters requested that their grievances proceed to arbitration or that the OEA acted arbitrarily in not processing grievance(s) to arbitration. See Vaca v. Sipes, 386 U.S. 171 (1967) and Saginario v. Attorney General, 87 N.J. 480 (1981). The employer's uncontroverted assertion that it denied the OEA's grievance concerning the shift change through step 2 of the grievance procedure substantially undercuts the inadequate representation allegation. That the Association may not have informed the firefighters of the disposition of the grievance at both steps was not tantamount to a failure in responsible representation. Essex County and Local 1158, IBEW, D.R. No. 81-6, 6 NJPER 426 (¶ 11214 1980).

The OEA's processing of the firefighter's complaint about unpaid lunch hours similarly fails to demonstrate inadequate representation. Their August 23, 1985 letter was apparently forwarded by the Association to the employer as a grievance because

the County's September 4 "denial" was addressed to the Association President (P-8). Moreover, on September 10, the Association appealed the grievance. Although the Association filed its appeal during the pendency of this case, no facts adduced at hearing suggest that its grievance processing would otherwise be perfunctory. See Vaca.

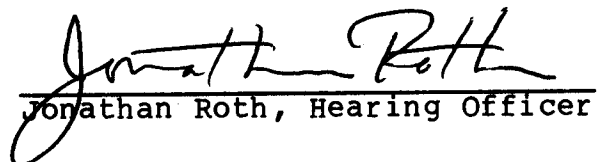
Finally, Petitioner did not allege that the firefighters sought to process a grievance about the April 16, 1984 memorandum essentially stating that the 11 p.m. - 7 a.m. shift will be sub-contracted to the Cedar Grove Fire Department. Moreover, on April 25, the Fire Chief rescinded the memorandum. The record did not show if the Association was informed of the April 16 memorandum. These facts cannot support a finding of inadequate representation. The OEA's failure to participate in the processing of this case and its alleged admission years ago that it was indifferent to the firefighters' inclusion in the unit standing alone, are insufficient justifications to sever firefighters from the broad-based unit.

In order to support a request for severance, the petitioned-for unit must also have 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. See, State, FMBA and CWA. The firefighters share a community of interest in the nature of work, (including high risk work), the equipment used and training. They also have a separate work

facility. However, the firefighters are integrated in the same supervisory structure with other unit employees and interact with them when conducting fire drills and inspecting facilities and equipment. Their work schedules have also been changed and are now substantially similar to those of the other unit employees. Furthermore, firefighters conduct orientation classes twice per month for all hospital employees which include instructions for the proper use of fire equipment. Accordingly, I find that the firefighters do not share a significantly greater community of interest in the petitioned-for unit compared to that interest in the present unit. I also find that based largely on the firefighters interaction with other unit employees and their similar work schedules, the nature of services rendered by firefighters are not purely independent from other employees.

Under all the circumstances of this case, I recommend that the petitioned-for unit is inappropriate and that the Petition should be dismissed.

Respectfully Submitted


Jonathan Roth, Hearing Officer

DATED: October 1, 1986
Trenton, New Jersey