

STATE OF NEW JERSEY  
NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK

Public Employer

and

Docket No. R-124

PROFESSIONAL FIRE OFFICERS, LOCAL  
1860, IAFF

Petitioner

and

NEWARK FIRE OFFICERS ASSOCIATION,

Intervenor

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the City of Newark, a hearing was held on November 6, 1969 before Hearing Officer Jeffrey B. Tener at which all parties were given the opportunity to present evidence, examine and cross-examine witnesses and argue orally. Thereafter, on January 17, 1970, the Hearing Officer issued his Report and Recommendations.<sup>1/</sup> Exceptions were filed by Petitioner and Intervenor. The Commission has considered the record, the Hearing Officer's Report and Recommendations, the Exceptions and on the facts in this case finds:

1. The City of Newark is a public employer within the meaning of the Act and is subject to its provisions.
2. The Professional Fire Officers, Local 1860, IAFF, and the Newark Fire Officers Association are employee organizations within the meaning of the Act.

1/ Attached hereto and made a part hereof.

3. The employer refuses to recognize petitioner as the exclusive negotiating representative for certain of its employees; accordingly, a question concerning the representation of public employees exists and the matter is properly before the Commission for determination.
4. The Hearing Officer found that notwithstanding the employer's "recognition" of Intervenor, the petition was timely filed and not barred by such recognition. No party has taken exception to that finding and the Commission hereby adopts it. The Hearing Officer further found that, notwithstanding the agreement of all parties to the appropriateness of a unit of fire officers, including Chief and Deputy Chiefs, the latter two titles could not properly be included in the unit because they were, respectively, the head and deputy heads of the department and thus statutorily excluded from the definition of public employee; the Hearing Officer also found that these employees were managerial executives, a class excluded from the Act's coverage. He therefore concluded that the appropriate unit consisted of all superior officers excluding Chief and Deputy Chiefs. Both Petitioner and Intervenor except to the exclusion of the Deputy Chiefs. Neither takes exception to the exclusion of the Chief.

The record reveals that the parties had stipulated to the inclusion of the Chief and Deputy Chiefs and that no evidence was taken concerning their status. The record does disclose that there is a Director, a Chief, 16 Deputy Chiefs and a total complement of approximately 230 officers. In his Report, the Hearing Officer sets forth the job description of the deputy chief: "Under the direction of the Fire Chief assists in the management and discipline of the Fire

Department...has charge of the Fire Department in the absence of the Fire Chief...' It was in reliance principally on this description that the Hearing Officer concluded as he did regarding the Deputy Chiefs. The Commission considers such description an inadequate basis for finding that the deputy chief is either a managerial executive or a deputy head. Furthermore, in view of the fact that there are two positions, namely Chief and Director, above the position of Deputy Chief, the Commission is equally unable to conclude from that additional fact that the Deputy Chief should be considered a deputy head. In the absence of more compelling evidence, the Commission declines to find that deputy chiefs are either managerial executives or deputy heads. They shall be included in the unit in accordance with the parties' initial stipulation. Regarding the status of the Chief, the Commission makes no determination at this time. The parties initially agreed to include him. By their Exceptions, Petitioner and Intervenor have, in effect, agreed to exclude him. The Employer filed no exceptions; it states it will abide by the Commission's decision. The record is inadequate for a determination. He will be permitted to vote subject to challenge.

The appropriate unit is: "All superior officers employed by the Newark Fire Department, including Deputy Chiefs, but excluding all firefighters and other non-supervisory employees, managerial executives, craft and professional employees, and policemen."

The parties stipulated that all those included in the unit agreed to were supervisors within the meaning of the Act. The record discloses that Local 1860, IAFF was specifically chartered for the purpose of

representing Newark fire officers and that a separate local, 1846, IAFF, was chartered for the purpose of representing rank and file firemen. The Intervenor has for years limited its membership to officers. Since in this case the term officer denotes supervisor and since both Local 1860 and the Intervenor admit only officers, i.e., supervisors, to membership, either organization may in accordance with the provisions of the Act, represent the supervisors of the Fire Department.

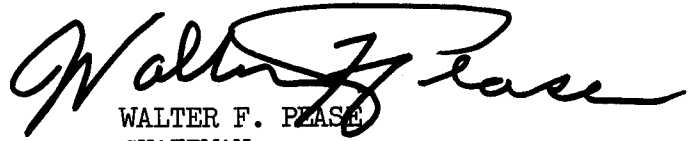
5. The Commission directs that a secret-ballot election shall be conducted among the employees in the unit found appropriate. The election shall be conducted as soon as possible but no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth in Section 4 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Professional Fire Officers, Local 1860, IAFF, the Newark Fire Officers Association, or neither.

The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE COMMISSION

  
WALTER F. PEASE  
CHAIRMAN

DATED: April 22, 1970  
Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK

Public Employer

and

PROFESSIONAL FIRE OFFICERS LOCAL 1860,  
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,  
AFL-CIO

Docket No. R-124

Petitioner

and

NEWARK FIRE OFFICERS ASSOCIATION

Intervenor

Appearances:

For the Public Employer

Ferdinand J. Biunno, Business Administrator  
Albert M. Pannullo, Administrative Analyst

For the Petitioner

Mulholland, Hickey & Lyman, Esqs.  
By Edward J. Hickey, Jr., Esq.

For the Intervenor

Joseph A. Hayden, Esq.

REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on August 4, 1969 by Local 1860, International Association of Firefighters, AFL-CIO. Pursuant to a Notice of Hearing dated October 29, 1969, a hearing was held before the undersigned Hearing Officer on November 6, 1969 in Newark, New Jersey at which all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. Upon the entire record in this proceeding, the Hearing Officer finds:

1. The City of Newark is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.
2. The Professional Fire Officers, Local 1860, International Association of Firefighters, AFL-CIO and the Newark Fire Officers Association are employee representatives within the meaning of the Act.
3. The Public Employer having refused to recognize the Petitioner as the exclusive representative of certain employees, a question concerning the representation of public employees exists.

The main issue in this case is whether or not the petition filed by Local 1860 is timely filed or whether it should be dismissed in light of the fact that the intervenor has been recognized by the City of Newark as the negotiating agent for the employees in question. If the petition is found to be timely filed, an issue arises as to the appropriate unit. This issue was not raised at the hearing because the parties are in agreement that the unit sought by the Petitioner is appropriate. Nevertheless, the undersigned must make a finding on the unit issue in conformity with statutory requirements.

It is the position of the Petitioner that the petition is timely and that an election should be directed to determine the majority representative of the employees in the unit sought. The Intervenor contends that it was accorded recognition on June 23 or 24, 1969 and that, therefore, the petition should be dismissed. The Public Employer, while maintaining that the Fire Officers Association has been recognized, indicates a desire to cooperate in this proceeding and a willingness to abide by whatever decision the Commission renders.

The New Jersey Employer-Employee Relations Act was passed September 13, 1968 and was made retroactively effective to July 1, 1968. At that time, and for many years prior thereto, the Newark Fire Officers

Association has represented the employees specified in the petition. In March or April of 1968, the FOA and other police and fire organizations presented salary demands to the City. The City Council agreed to these demands on the condition that funds would be available from the State. In the following year and a half, these employee organizations lobbied actively to see that these funds were made available. In September 1969, following passage of the Urban Aid Act, funds were provided and the City Council passed an ordinance granting pay increases.

Sometime in the latter part of 1968, the International Association of Firefighters began an organizing campaign in Newark. On January 29, 1969, the IAFF, parent organization of Local 1860, wrote to Mayor Addonizio indicating that the IAFF was organizing and that it soon would be asking for recognition in accordance with Chapter 303, Laws of 1968. Furthermore, the letter urged "that no precipitous action be taken toward recognition of any group until such time as all interested parties are advised and heard." This letter was followed by a meeting between the Mayor and representatives of the IAFF, among others, on February 13, 1969. A request for recognition was made by the IAFF at this meeting. The record indicates that the Mayor stated that the law was new and that there were no rules and regulations and that, therefore, "a time would have to elapse before he could make a determination." The Mayor did not indicate that any other employee organization was seeking recognition.

In an attempt to get some clarification on recognition and other matters, the Corporation Counsel of the City of Newark met with officials of the Public Employment Relations Commission on February 19, 1969.

He was told that regulations would be promulgated in the near future. A number of questions remained unanswered after this meeting, according to a letter sent to the IAFF by Mayor Addonizio on February 26,



1969. Therefore, in that same letter, the Mayor stated that, inter alia, "until these regulations [of the Public Employment Relations Commission] are available to us, no action will be taken by the City of Newark in granting recognition to any employee organizations under the Act."

At a general membership meeting of the Fire Officers Association held March 10, 1969, a motion was passed to the effect that - according to the minutes of the meeting - "the executive board with the assistance of our attorney notify the Mayor (sic) of the City of Newark, N. J. that the Fire Officers Association, is as it traditionally has been in the past, the sole bargaining agent for the paid fire officers of the Newark Fire Department." This resolution was made known to the Mayor and Councilmen by letter of April 15, 1969 in which a formal request for recognition was made.

The next event in this sequence was a meeting which took place on June 23 and 24, 1969 in the Conference Room of the City Council chambers. There is some disagreement as to the exact date but this is not material. The meeting was called by Mr. Biunno, the Business Administrator, and attended by representatives of the Fire Officers Association as well as by representatives of three other employee groups: the Firemen's Mutual Benevolent Association, the Patrolmen's Benevolent Association and the Police Superior Officers Association. This meeting was attended by Mr. Pannullo, Administrative Analyst and, for a period of time, by Mr. Gordon, Corporation Counsel. At this meeting, Mr. Biunno agreed to "recognize" the four employee organizations as the exclusive negotiating agents for their respective units. Recognition was granted on the basis of the majority status of the FOA as documented by dues check-off records. Approximately 213 of the 230 superior officers in the unit were having dues deducted from their pay by the City.

This "recognition" did not take written form either at this time or subsequently. It was conveyed orally to the parties. Presumably it is mentioned in notes or minutes of the meeting which Mr. Biunno had a city secretary take. Local 1860 was not invited to nor aware of this meeting.

On July 10, 1969, Local 1860 made a written request for recognition. This request was denied July 18, 1969. On August 4, 1969, the petition was filed by Local 1860 with the Public Employment Relations Commission.

The question before the Hearing Officer is whether or not the "recognition" which was accorded to the FOA On June 23 or 24, 1969 was valid. If it is valid, then the petition filed by Local 1860 might be untimely under the Rules and Regulations of the Commission. If the recognition is not valid, then the petition presumably is valid and an election would be recommended.

The authority of the Business Administrator in the area of "recognition" is unclear. The Optional Municipal Charters Act, N.J.S.A. 40:69A-44(e), provides that "the business administrator shall, subject to the direction of the mayor, supervise the administration of each of the departments established by ordinance. For this purpose, he shall have the power to investigate the organization and operation of any and all departments, to prescribe standards and rules of administrative practice and procedure,..." (Emphasis supplied) There is nothing in the record to indicate that the Mayor directed the Business Administrator to recognize the FOA and the other organizations.

Testimony on this issue is ambiguous. The Business Administrator stated that, "In my opinion, it recognition would be binding. And, I would say the City - meaning the members of the Municipal Council - would recognize it as binding." However, he also stated that no organization has

been granted recognition other than oral recognition because we are "referring to a formal declaration in writing, which cannot be done by me alone." The Rules and Regulations of the Commission specifically call for written recognition in Section 19:11-14.

The Rules and Regulations of the Commission did not become effective until August 29, 1969. These Rules set forth five criteria in Section 19:11-14 which are to be followed if the grant of recognition thereunder is to be considered by the Commission as tantamount to certification by the Commission. In May 1969, before these Rules and Regulations became effective, Proposed Rules and Regulations were made available and discussed. Mr. Biunno testified that he personally picked up a copy of the Proposed Rules and Regulations and that he and his staff went over them. He also stated on the record that he did not remember specifically the provisions relating to recognition. These provisions were identical in the Proposed Rules and Regulations and in the Rules and Regulations as finally adopted.

Briefly, the facts surrounding the recognition of the FOA fall into two groups. On the one hand, the FOA had represented the superior officers for many years. At the time of recognition, they were actively seeking to assure the availability of additional funds from the State which would permit the City Council to provide salary increases. Over 90% of the superior officers were having their FOA dues deducted from their pay by the City. The FOA had asked the City for recognition.

On the other hand, the IAFF had also asked for recognition. The Mayor had assured them that the City would recognize no employee organization until the Rules and Regulations of the Commission became available. These Rules and Regulations became effective over two months after the recognition of the FOA. The Rules and Regulations were not followed in granting recog-

dition to the FOA. The Proposed Rules and Regulations contained identical criteria regarding recognition. These were not followed although the City was aware of the existence of these proposed rules. The IAFF was not told of the meeting at which the FOA was recognized. While the FOA had a membership of over 90% of those eligible, the fact is that membership in the two organizations is widely overlapping. Testimony at the hearing regarding the procedure for chartering new locals of the IAFF indicated that Local 1860 had signed up over 50% of the superior officers by June, 1969 when the recognition of the FOA was granted.

On the basis of these facts, the Hearing Officer finds the petition of Local 1860 to be timely. This finding should not be interpreted as a rebuff to the City. There is nothing in the record to indicate that the City intentionally violated Chapter 303 in recognizing the FOA. The Act was very new in June 1969 and the Commission had not adopted Rules and Regulations. Nevertheless, the proposed rules were not followed and Local 1860 had a substantial membership and had been assured that no organization would be recognized until rules were adopted. Under these circumstances, it seems that the best way to clear the air and to find out which of these organizations the employees wants to represent them for the purposes of collective negotiations would be through a secret-ballot election.

#### The Appropriate Unit

The positions included in the petition are Fire Chief, Deputy Fire Chief, Superintendent of Fire Alarms and Radio, Battalion Fire Chief, Chief Inspector of Combustibles, Chief Communications Officer, Supervisor of Apparatus, Assistant Superintendent of Fire Alarms and Radio, Fire Captain, Assistant Chief Inspector of Combustibles, Chief Fire Alarm Operator, and Foreman, Fire Alarms and Radio.

All parties stipulated that this unit was an appropriate one.

Furthermore, the parties stipulated that all of the positions included in the petition were supervisory, i.e., occupants of these positions are supervisors as defined in the Act. (The Act defines a supervisor as one "having the power to hire, discharge, discipline, or to effectively recommend the same..." Section 7)

The undersigned will not go beyond the stipulations of the parties except to the extent necessary to conform with statutory requirements. The positions in question are found to be supervisory and the occupants of these positions are found to be supervisors as defined in the Act.

Similarly, the unit is found to be appropriate in that it has been "defined with due regard for the community of interest among the employees concerned..." as specified in Section 7 of the Act.

However, not all of the positions are appropriately included in a negotiating unit. Section 3 of the Act defines public employee as "any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions...(Emphasis supplied).

The terms "head" and "deputy head" are not defined in the Act. But they are specifically excluded from the definition of public employee. While it is recognized that there is a Director of the Fire Department, the job description of Fire Chief provides that, "Under the direction of a designated member of the local governing body has charge of the Fire Department." The Deputy Fire Chief, "Under the direction of the Fire Chief assists in the management and discipline of the Fire Department" and "has charge of the Fire Department in the absence of the Fire Chief..." These job descriptions lead the Hearing Officer to the conclusion that the incumbents of these

positions are "head" and "deputy heads" of departments as provided in the Act and that they are not "public employees" as defined in the Act. Therefore, they may not be included in an appropriate unit since only public employees are covered by the Act. (Section 7)

Furthermore, the Act specifically provides that "managerial executives" are not to receive the rights which the Act confers (Section 7). Again, the term "managerial executive" is not defined but the job descriptions of the Fire Chief and Deputy Fire Chief would seem to indicate a managerial function: the Chief has charge of the department and the Deputy Chief has charge of the Department in the absence of the Chief.

The job description of the Battalion Fire Chief, who is under the Deputy Chief in the chain of command, states that he "assists in the management and discipline of the municipal uniformed fire department" but it specifies that he do so "by supervising a group of fire companies...". This is different from managing or assisting in the management of the Fire Department. Battalion fire chiefs are not found to be managerial executives.


In a group as large as this one - with over 230 superior officers - one would expect to find more than one "managerial executive" at the top. Based upon the above, the undersigned finds that the titles of Fire Chief and Deputy Fire Chief are held by "managerial executives." Thus, these positions are not entitled to coverage under the Act.

The appropriate unit is found to be all superior officers of the Newark Fire Department including battalion chief and captains but excluding firefighters and other nonsupervisors, managerial executives, craft employees, professional employees and policemen.

#### Recommendations

It is recommended that an election be directed among the employees in the unit described above to determine whether the employees of the Newark

Fire Department wish to be represented for purposes of collective negotiations by Local 1860, IAFF, by the Newark Fire Officers Association, or by neither organization. The recognition which has been granted to the FOA should not constitute a bar to an election because the Rules which provide for such a bar were not adhered to in granting recognition to the FOA. The chief and deputy chief should be excluded from the unit because they are not "public employees" and because they are "managerial executives". The election should be conducted in accordance with the Rules and Regulations of the Public Employment Relations Commission.

  
Jeffrey B. Tener  
Hearing Officer

DATED: January 17, 1970  
Trenton, New Jersey