

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of

CITY OF ELIZABETH

-and-

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL 777, AFL-CIO

-and-

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION
LOCAL 9

-and-

ELIZABETH FIRE OFFICER'S ASSOCIATION

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of the employees of the City of Elizabeth Fire Department, a meeting was held on April 24, 1969 before ad hoc Hearing Officer Howard W. Kleeb at which the issues were discussed and the parties were in agreement that the ad hoc Hearing Officer's Report would serve as a record of their agreement. On April 30, 1969, the ad hoc Hearing Officer, in accordance with the agreement with the parties, issued a Report and Recommendation. No Exceptions have been filed to such Report. The Commission has considered the Hearing Officer's Report and Recommendation and finds:

1. The City of Elizabeth is a public employer within the meaning of Section 3 (c) of the Act and is subject to the provisions of the Act.
2. The International Association of Firefighters Local 777, AFL-CIO, Firemen's Mutual Benevolent Association Local 9, and Elizabeth Fire

Officer's Association are employee representatives within the meaning of Section 3 (e) of the Act.

3. The public employer having refused to recognize any of the employee representatives as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the Commission.
4. The Hearing Officer's Report and Recommendation, attached hereto and made a part hereof, is adopted, except as modified herein.
5. On the basis of the agreed-upon facts, the Commission finds the following voting groups to be appropriate.

Group 1 - All Fire Officers, and probationary Fire Officers excluding uniformed firemen, probationary firemen, linemen, and the supervisor in the Bureau of Communications, mechanics and the supervisor in Bureau of Repair and all clerical employees.

Group 2 - All uniformed firemen, probationary firemen, (and subject to challenge-linemen and the supervisor in the Bureau of Communications and mechanics and the supervisor in the Bureau of Repair) excluding all clerical employees.

6. The Commission directs that secret ballot elections shall be conducted among the employees in Voting Group 1 and Voting Group 2. The ballot for employees in Voting Group 1 will contain the following choices:

(a) Do you desire to be represented for the purposes of collective negotiations in a separate unit by Elizabeth Fire Officer's Association? "Yes" or "No"

- (b) If a majority of the Fire Officers and probationary Fire Officers do not desire to be represented in a separate unit by the Elizabeth Fire Officer's Association then which, if any, of the below named employee organizations do you desire to represent you for the purposes of collective negotiations in a combined unit of employees in Voting Groups 1 and 2: International Association of Fire Fighters Local 777, AFL-CIO, Firemen's Mutual Benevolent Association, or neither.

Employees in Voting Group 2 will vote on whether they desire to be represented for purposes of collective negotiations by: International Association of Firefighters Local 777, AFL-CIO, Firemen's Mutual Benevolent Association Local 9, or neither.

If a majority of the valid ballots cast in Voting Group 1 are in favor of the Elizabeth Fire Officer's Association, the voters will have indicated their desires to be represented separately and the Commission will issue an appropriate Certification of Representatives and such Voting Group shall, in these circumstances, constitute an appropriate collective negotiating unit. In such event, if a majority of the valid ballots cast in Voting Group 2 are in favor of the International Association of Firefighters Local 777 or the Firemen's Mutual Benevolent Association Local 9, the Commission shall issue an appropriate Certification of Representatives for such group and the employees in Voting Group 2 will constitute an appropriate collective negotiating unit. If a majority of the valid ballots cast in Voting Group 2 are not cast for either employee organization, the Commission shall issue

an appropriate Certification of Results of the election.

If a majority of the valid ballots cast in Voting Group 1 are not in favor of the Elizabeth Fire Officer's Association, then the ballots cast by them on the second choice on their ballot shall be pooled with those cast by the employees in Voting Group 2. If this contingency occurs and a majority of the valid ballots cast in Voting Groups 1 and 2 combined have voted in favor of the International Association of Firefighters Local 777 or Firemen's Mutual Benevolent Association Local 9, the Commission shall issue a Certification of Representatives to the appropriate organization for a unit comprised of employees in both voting groups which shall be held to be an appropriate collective negotiating unit. If a majority of the valid ballots cast in the pooled group is not cast for either employee organization, the Commission shall issue a Certificate of Results of the election.

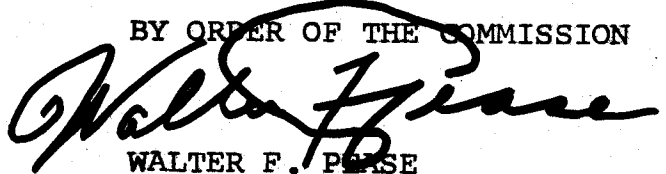
The majority representative, if any, in accordance with the above procedure shall be determined by a majority of the valid ballots cast in each election. If none of the choices in the election where three choices are provided receives a majority of the valid ballots cast, there shall be one run-off election between the two choices receiving the largest and second largest number of votes.

In accordance with the above the Commission hereby directs that an election shall be held as soon as possible but not later than thirty (30) days from the date of this decision.

Eligible to vote are all employees listed in Section 5 who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period

because they were 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.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Walter F. Perse", is written over the typed name and title.

WALTER F. PERSE
CHAIRMAN

DATED: May 14, 1969
Trenton, New Jersey

NEW JERSEY PUBLIC EMPLOYEE RELATIONS COMMISSION

City of Elizabeth, N. J.]

and]

International Association of Firefighters]
Local 777, AFL-CIO]

and]

Firemen's Mutual Benevolent Association]
Local 9]

and]

Elizabeth Fire Officer's Association]
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Hearing Officer's Report
and
Recommendation

re:

Elizabeth City Fire Dept.

Appearances:

For The City of Elizabeth, N. J. 1/

Frank P. Trocino, First Asst. City Attorney
John J. Burns

For International Association of Firefighters,
Local 777, AFL-CIO
[Herein called IAFF, Local 777]

Victor J. Parsonnet, Attorney
Charles Africano, President

For Firemen's Mutual Benevolent Association Local 9
[Herein called FMBA, Local 9]

Anthony Rinaldo, Jr. Attorney
Donald N. Silvey, Pres. Local 9
Vincent Slavin, V. P. Local 9
William F. Mallon, Pres. State of N. J. FMBA

For Elizabeth Fire Officer's Association
[Herein called EFOA]

William J. Sheridan, Pres.
Raymond M. Zabita, V. Pres.

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Mr. Trocino appeared very briefly to advise that the City of Elizabeth was taking no position on the issues and was prepared to abide by the Decision of the Public Employee Relations Commission.

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission [herein called the Commission], the undersigned Hearing Officer met with representatives of the parties at the offices of the State of New Jersey, 1100 Raymond St., Newark, N. J. on April 24, 1969.

Because all of the parties present [except for the City of Elizabeth-see footnote 1] were in agreement as to the facts and because they agreed to proceed in accordance with the procedure set forth below it was unnecessary to make a transcript of the proceeding. The parties agreed that they would consider this report as a record of their agreement and if they do not agree with the facts and recommendations set forth herein they may file exceptions with the Commission within ten calendar days of the date of this report, or such future time as the Commission may allow. If no exceptions are filed to this report, the Commission, upon the expiration of the period for filing such exceptions, may decide the matter forthwith upon this report or make other disposition of the matter.

AGREED UPON FACTS

IAFF, Local 777; FMBA, Local 9; and EFOA agreed to the following:

1. The City of Elizabeth, New Jersey, is a public employer within the meaning of Section 3 (c) of the New Jersey-Employee Relations Act. [Herein called the Act]
2. IAFF, Local 777; FMBA, Local 9; and EFOA are representatives within the meaning of Section 3 (e) of the Act.
3. Since EFOA does not admit non-supervisory personnel to membership, this association is qualified under Section 7 to represent Fire Officers only, who are supervisory employees within the Act.
4. A question concerning the representation of public employees exists since the City of Elizabeth has refused to recognize any of the representatives as the exclusive representative of certain employees, and the matter is appropriately before the Commission. [Note: FMBA Local 9, in agreeing with the facts and procedures set forth called attention to its position taken in certain court proceedings in which it is questioning the Constitutionality of the Act. The parties agreed that FMBA, Local 9 may reserve this position and is not waiving its rights and contentions by its participation in the instant proceeding.]
5. Applicability of Section 7 of the Act - Because of the fact that all three representatives agreed 2/ that "Fire Officers" [Chiefs, Deputy Chiefs, Battalion Chiefs, and Captains], are supervisory employees, but may be appropriately grouped with the Uniformed Firemen for the purpose of collective negotiations a threshold question is raised under Section 7, of the Act, which states inter alia as follows:

"Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization

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EFOA desires to represent Fire Officers only, but has no objection to giving the Fire Officers an opportunity to be in the same unit as the uniformed firemen.

or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership. The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the Commission shall not intervene in matters of recognition and unit definition except in the event of a dispute." [emphasis supplied]

PRIOR ESTABLISHED PRACTICE

The three representatives are in agreement that the past history of the collective negotiations between the City, and IAFF, Local 777, and the City and FMBA, Local 9, clearly indicates an "established practice" within the meaning of Section 7 of the Act.

The representatives agree that the following represents an accurate summary of the history of IAFF, Local 777, FMBA, Local 9 and EFOA:

Beginning in 1902 when FMBA was begun it admitted to membership both Fire Officers and uniformed firemen of the City of Elizabeth. This has been the case up to and including the present date. Over these years FMBA has represented their members as well as non-members for the purpose of discussing wages, hours, and working conditions with officials of the City who have also dealt with FMBA for these purposes on an informal basis. FMBA has also handled grievances for the Fire Officers and uniformed firemen and actively participated in budget hearings before the Mayor and City Council of the City of Elizabeth.

FMBA holds regular monthly meetings which are open to and attended by both Fire Officers and uniformed firemen. From time to time over the past years Fire Officers have been elected by the members of FMBA to office in the FMBA. Two of the present members of the FMBA Board of Directors are Fire Officers. FMBA holds a Board of Directors meeting once a month. The same membership requirements are applicable to both Fire Officers and uniformed firemen.

In 1944, IAFF, Local 777 was granted a charter that permitted both Fire Officers and uniformed firemen to become members. Initially Local 777 membership was confined to Fire Officers but about 1949 it was decided to take into membership both Fire Officers and uniformed firemen and since that date Local 777 has been representing both of these classifications in the same manner as FMBA, Local 9.

That is, Local 777 has represented both Fire Officers and uniformed firemen for the purpose of discussing wages, hours, and working conditions with the Mayor and City Council of the City of Elizabeth and they have handled grievances for both classes of firemen. Monthly meetings are held by Local 777 and attended by Fire Officers and uniformed firemen. Fire Officers have held office from time to time in Local 777 and currently a Fire Officer is a member of the Board of Directors. The Board of Directors meetings are held once a month.

Elizabeth Fire Officers Association was formed on July 11, 1968. This organization limits its membership to "line" officers of the Elizabeth Fire Department and does not take into membership "staff" officers. Nor does it take into membership uniformed firemen. EFOA is interested only in representing "line" officers which includes the classifications Chief, Deputy Chief, Battalion Chiefs, and Captains. Since its inception EFOA has represented Fire Officers before the Mayor and City Council in discussing wages, hours, and working conditions and has also handled grievances for Fire Officers. The organization holds regular monthly membership meetings and regular executive board meetings each month.

The above agreed upon facts support the position of the representatives that the Fire Officers may be combined with the uniformed firemen for the purpose of collective negotiations, or they may be represented separately by EFOA, under Section 7 of the Act.

UNIT CONTENTIONS

IAFF, Local 777 contends the appropriate unit to be all Fire Officers, probationary Fire Officers, uniformed firemen, probationary firemen, linemen and the supervisor in the Bureau of Communications, mechanics and the supervisor in the Bureau of Repair, excluding clerical employees.

FMBA, Local 9 contends the appropriate unit to be all Fire Officers, probationary Fire Officers, uniformed firemen, probationary firemen, excluding linemen and the supervisor in the Bureau of Communication, mechanics and the supervisor in the Bureau of Repair and clerical employees.

EFOA contends the appropriate unit to be all Fire Officers, and probationary Fire Officers, excluding uniformed firemen, probationary firemen, linemen and the supervisor in the Bureau of Communications, mechanics and the supervisor in the Bureau of Repair and clerical employees.

Both IAFF, Local 777 and FMBA, Local 9, agree with EFOA's unit contention only in the event that a majority of the Fire Officer's should choose EFOA to represent them separately as set forth below. The only disagreement on the unit between Local 777, IAFF, and FMBA, Local 9 is with respect to the following classifications:

Linemen in the Bureau of Communications	(2 employees)
Supervisor of the linemen in the Bureau of Communications	(1 employee)
Mechanics in the Bureau of Repair	(2 employees)
Supervisor of the Mechanics in the Bureau of Repair	(1 employee)

IAFF, Local 777 would include these classifications and FMBA, Local 9 would exclude them.

The representatives agreed that employees in the above named positions should be permitted to cast challenged ballots in the forthcoming election leaving to a future date, the question of their inclusion or exclusion in an appropriate collective negotiation unit. It is so recommended.

THE METHOD OF VOTING AND THE POOLING OF BALLOTS

The representatives agreed there should be two voting groups as follows:

- Group 1- All Fire Officers, and probationary Fire Officers excluding uniformed firemen, probationary firemen, linemen, and the supervisor in the Bureau of Communications, mechanics and the supervisor in the Bureau of Repair and all clerical employees.
- Group 2- All uniformed firemen, probationary firemen, [and subject to challenge—linemen and the supervisor in the Bureau of Communications and mechanics and the supervisor in the Bureau of Repair] excluding all clerical employees.

The representatives agreed that the Commission may direct that a secret ballot election shall be conducted in the two voting groups in the manner described below. The election shall be conducted as soon as possible but not later than 30 days from the date of the Commission's Decision and Direction of Elections.

The ballot for employees in Group (1) above will contain alternate choices as follows:

- a. Do you wish to be represented separately by Elizabeth Fire Officers Association? The choice shall be "Yes" or "No."
- b. If a majority of the Fire Officers and probationary Fire Officers casting valid ballots in Group (1) do not wish to be represented by Elizabeth Fire Officers Association, mark an X in the square of your choice for one of the following:

I.A.F.F. Local 777, AFL-CIO
F.M.B.A. Local 9
Neither of these representatives

[The representatives agree to the above order for ballot purposes]

The ballot for employees in Group (2) above will contain the following language: "mark an X in the square of your choice" for one of the following:

I.A.F.F. Local 777, AFL-CIO
F.M.B.A. Local 9
Neither of these representatives

[The representatives agree to the above order for ballot purposes]
If a majority of the valid ballots cast in Group (1) above are in favor of EFOA, the voters will have indicated their desires to be represented separately

and the Commission shall issue a Certificate of Representative to EFOA and such voting group, shall, in the circumstances, constitute an appropriate unit. In such event, if a majority of the valid ballots cast in voting Group (2) are in favor of I.A.F.F. Local 777, or F.M.B.A. Local 9, the Commission shall issue a Certificate of Representative for such group which, in the circumstances, will constitute an appropriate unit or if a majority of the valid ballots cast in Group (2) are in favor of neither organization, the Commission shall issue a Certificate of Results of election.

If a majority of the valid ballots cast in voting Group (1) are not in favor of EFOA, then the ballots cast by them on the second choice on their ballot shall be pooled with those cast by the employees in voting Group (2). If this contingency occurs and a majority of the valid ballots cast in Group (1) and (2) combined have voted in favor of IAFF, Local 777, or FMBA, Local 9, the Commission shall issue a Certificate of Representative to the appropriate organization for a unit comprised of employees in both voting groups, which unit in the circumstances, will be appropriate, subject to the final disposition of the challenged classifications.

If a majority of the valid ballots cast in the pooled groups is for neither IAFF, Local 777 or FMBA, Local 9, the Commission shall issue a Certificate of Results of Election.

RECOMMENDATION

It is hereby recommended by the undersigned that the Commission issue a Decision and Direction of election adopting the above procedures which have been agreed to by the parties.

Dated: April 30, 1969
Vienna, Va.


Howard W. Klee

Hearing Officer