

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBRIIDGE TOWNSHIP BOARD OF FIRE
COMMISSIONERS, DISTRICT NO. 1

Public Employer

and

Docket No. RO-121

LOCAL #290 INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Pursuant to Notice of Hearing to resolve a question concerning the representation of certain employees of the Woodbridge Township Board of Fire Commissioners, District No. 1, a hearing was held on July 9, 1970 before Hearing Officer Sally Parker. All parties were given full opportunity to examine and cross-examine witnesses, present evidence and to argue orally. No briefs were submitted by the parties. Thereafter, the Hearing Officer issued her Report and Recommendations, attached hereto and made a part hereof. ^{1/} The Commission has considered the record, the Hearing Officer's Report and Recommendations and on the basis of the facts in this case finds:

1. The Woodbridge Board of Fire Commissioners, District No. 1 is a public employer within the meaning of the Act and is subject to the

1/ Exceptions to that Report were filed by Petitioner but were not received until after the expiration of the period for timely filing. No extension had been granted to Petitioner for a later filing. They are therefore rejected as untimely filed.

provisions of the Act.

2. Local #290 International Association of Fire Fighters is an employee representative within the meaning of the Act.
3. The public employer refuses to recognize the Petitioner as the exclusive representative of certain employees in the Fire Department. Thus, a question concerning representation exists and is properly before the Commission for determination.
4. The dispute in this case centers upon the inclusion of Captains within a unit of firemen. The union seeks their inclusion; the Board opposes it on the grounds that the Captains are supervisors within the meaning of the Act.

The Hearing Officer found that Captains do not possess or regularly exercise the power to hire, discharge, or discipline, or to effectively recommend the same and thus concluded that they are not supervisors within the meaning of the Act. The Hearing Officer further found that there existed a community of interest between the Captains and the firemen. In the absence of exceptions to these findings and in light of the record support for them, the Commission adopts these findings pro forma. Notwithstanding the foregoing, the Hearing Officer recommended the exclusion of the Captains from the unit because of an anticipated confidential relationship in labor relations matters which Captains would, in the Hearing Officer's view, inevitably enjoy with the Board of Fire Commissioners as the District moved into an era of collective negotiations. The Employer made no such claim in this proceeding and the record is devoid of evidence

indicating that Captains have been or now are part of "the management team" regarding labor relations policy. The record does not suggest much less compel the conclusion that this relationship will inevitably arise. Specifically, there is neither record evidence nor contention that Captains must, in the words of the Hearing Officer, "inevitably be privy to the strategy of the Board in matters of contract negotiations and/or grievance handling." In short, the recommended unit finding was made to turn on an anticipation - not contended for - rather than the fact of a relationship inimical to community of interest.

Although the Commission has in the past, in the absence of timely exceptions, assumed the agreement of all parties to the Hearing Officer's Report and Recommendations and adopted such report on a pro forma basis, it has also modified such reports to achieve compliance with the objectives and requirements of Chapter 303 and established Commission policy. The instant case is one where a pro forma adoption in the absence of timely exceptions would produce a result contrary to the record and the Act. The Commission feels obliged to reject the conclusion of "conflict of interest" as one having no foundation in the record. Consequently, it also rejects the recommended exclusion of Captains from the unit. The Captains shall be included in the unit.

5. The appropriate collective negotiating unit is: "All firemen and officers employed by the Woodbirdge Board of Fire Commissioners

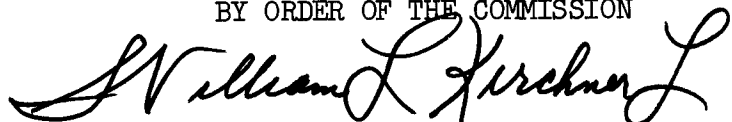
District No. 1, excluding office clerical, professional and craft employees, managerial executives, police and supervisors within the meaning of the Act."

DIRECTION OF ELECTION

The Commission directs that a secret-ballot election shall be conducted among the eligible 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 in the unit above who were employed during the payroll period immediately preceeding the date below, including employees who did not work during that period because they were ill, on vacation, temporarily laid off or on military leave. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned 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 Local #290 International Association of Fire Fighters.

BY ORDER OF THE COMMISSION



WILLIAM L. KIRCHNER, JR.
ACTING CHAIRMAN

DATED: January 21, 1971
Trenton, New Jersey

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Appearances: Francis Reilly, Esquire, for the Woodbridge Township Board
of Fire Commissioners, District No. 1

Mr. Ross Ritto, Vice President, International Association
of Fire Fighters, AFL-CIO

Witnesses: For Local #290, International Association of Fire Fighters:

Mr. George Wilcox
Mr. Peter Smith
Mr. Edward Crowe

For Woodbridge Township Board of Fire Commissioners;

Mr. Warren Harned
Mr. William Garity
Mr. Tod Howell

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission, a hearing was held on July 9, 1970, before the undersigned Hearing Officer of the Commission to resolve questions concerning a representation of public employees. At the hearing, the parties were given full opportunity to present testimony and evidence and argument, and to examine and cross-examine witnesses.

The Hearing Officer has considered the entire record and finds:

1. The Board of Fire Commissioners, District No. 1 is a Public Employer within the meaning of Section 3(a) of the Act and is subject to the provisions of the Act.

2. Local #290, International Association of Fire Fighters is an employee representative within the meaning of the Act.

3. The Public Employer having refused to recognize the employee representative as the exclusive representative of certain employees in the Fire Department, a question concerning the representation of employees exists and is properly before the undersigned for a Report and Recommendations to the Commission.

4. The Board of Fire Commissioners argued that Fire Captains, inasmuch as they are supervisory personnel within the meaning of the Act, lack community of interest adequate to place them in the same negotiating unit with fire fighters.

The Union argued that: (a) the Captains are not such supervisors as are barred by Section 7 of the Act from being represented by an organization admitting to membership non-supervisors; (b) that if they are found to be such supervisors within the meaning of Section 7, the history, showing that the Association represented and negotiated for them in the same unit as the fire fighters and that the Board so negotiated with the Association for them, brings them within the Act's exception to the prohibition in Section 7 and, in fact, requires their inclusion in the firemen's unit without regard to the question of community of interest; and (c) that there is, in any case, adequate community of interest between the Captain and the fire fighters so that they may appropriately be part of the same negotiating unit.

ARE THEY SUPERVISORS?

The question focuses most precisely on the problem if it is stated: "Are they such supervisors as, with the stated exceptions, are barred by the Act from being represented in collective negotiations by an employee organization that admits non-supervisory personnel to its membership?" Such supervisors are described in Section 7 as those "having the power to hire, discharge, discipline, or to effectively recommend the same"; thus it is clear that under the Act supervisors other than those so described (provided they meet the test of community of interest), may be in the same negotiating unit as the non-supervisory personnel.

I find from studying the record that the Captains not only do not have the power to hire, discharge or discipline (which power is exercised by the Board of Fire Commissioners), but further, that it is not established that they have the power to effectively recommend such action. While various Board witnesses testified that the Captain has the power to discipline, the only instance cited is one in which the power was exercised in 1952 or 1953 and involved Leo Garriss and Captain Prekop. Witness Harned testified that the Captain suspended the fire fighter and recommended dismissal. The Board did not vote dismissal, but continued his suspension for a brief period until he retired. The fact that there has been no disciplinary action on the part of any of the Captains (the unit petitioned for includes 9 firemen, 1 lieutenant, and 3 captains) in 18 years strongly suggests that while the captains may have the power to discipline, as claimed in the record, they do not regularly exercise this power.^{1/}

^{1/} Department of Public Works, Cherry Hill Township and AFSCME, Local 1965
PERC 30

The relationship of the captains to the fire fighters they supervise is spelled out in the official Rules and Regulations for the Paid Firemen of Woodbridge Fire Company No. 1 (adopted by the Board of Fire Commissioners of District No. 1, March 23, 1938). The pertinent portion of the Rules (The Captain's Duties) reads:

"5. He shall see that all laws, ordinances, rules and regulations, orders or directions for the government of his Department are promptly, cheerfully and implicitly enforced and obeyed, and that all derelictions or transgressions that may come to his knowledge are promptly investigated and reported to the Commissioner in charge, by proper and well-sustained charges."

In another section, Charges Against Members, the Rules and Regulations further provide:

"(4) Violations of Rules, regulations, general orders, written or verbal, are punishable by reprimands, fine, forfeiture of days off, reduction in rank, suspension or discharge, as determined in each case by the Board of Fire Commissioners District No. 1".

Taken together these sections clearly show that the Captain's supervisory role is simply that of investigator and reporter of charges to the Commissioners; the Board of Fire Commissioners alone determine whether disciplinary action shall be taken, and the nature of the discipline.

In terms of the scope of duties of the Captain, it was testified that the Fire Captain supervises the maintenance of the building, assigns men to the apparatus and, in the event extra equipment is needed at a fire, he will bring it. The work schedule for the firemen is prepared by the Chairman of the House Committee (a Commissioner) and given to the Captain. The Chairman of the House Committee also signs general or special orders directed to paid fire personnel. The men report any change in tour of duty and any absence from the firehouse while on duty, to the Captain. When a fire develops, the Captain usually remains in the firehouse, sounds the

alarm, and broadcasts over the radio the location and nature of the fire for the volunteers. There he mans the radio and answers the telephone until it is necessary (if it is) to have additional equipment at the scene. If that situation develops, the Captain brings out the additional equipment and then he assumes the rank of fireman because the volunteers are in charge, and he takes his instructions from them.

I conclude that the fire captains employed by the Woodbridge Board of Fire Commissioners District No. 1 are not such supervisors as are responsible to make effective recommendations about the hire, discharge or discipline of fire fighters.

PAST PRACTICE

Testimony reveals that a captain participated either as an officer of Local 290, or spokesman for the fire fighter committee, in informal meetings to discuss working conditions. However, the record shows that decisionmaking on firemen working conditions prior to Chapter 303 was unilateral rather than bilateral as would be required in true collective bargaining. The following testimony reveals the Union President's own assessment of these meetings:

"Q: Mr. Wilcox, these negotiations, they weren't in fact negotiations, were they? You presented a letter and you took what you got, isn't that the case?

A: That is basically the case; they were informal discussions. We didn't have a chance to talk.

Q: Well, there had to be some conversation or they wouldn't know what you wanted; isn't that correct?

A: Right.

Q: Now, in the past do you know of any situation in which the men did not ask for anything and received something?

A: To my knowledge, I couldn't answer that no.

Q: And in the past there was never any further discussion once the request of the men was presented to the Board.

A: In the past, no."

Clearly, the parties did not participate in negotiations, i.e., a give and take discussion attempting to arrive at an agreement. Accordingly, there is no established practice, or prior agreement finding which would govern the captains placement in or exclusion from the same negotiating unit with the firemen.

COMMUNITY OF INTEREST

The fact that all the employees involved in the unit proposed by the Union are employees of the same employer in itself establishes among them some community of interest for purposes of collective bargaining. In addition, the differential in their pay of \$400 is not substantial. At any time, in the absence of the Captain, the fireman next in line (seniority appears to be the operating criterion for selection) is designated by the House Chairman to assume the Captain's duties. Smallness of the size of the unit and such criteria as the line of promotion, which is from fire fighter to captain, the likeness of working conditions (vacation, longevity, sick days, overtime, pension), and the sharing in common of workplace facilities such as kitchen, dormitory, locker area and rest rooms all operate to produce a finding of strong community of interest between the firemen and the captain. There is the further phenomenon of the paid fire fighter and captain both assuming a subordinate role to the volunteer fire fighter, under appropriate circumstances, at a fire.

CONFIDENTIALITY

Testimony indicates that this fire district came into being as a meeting of a group of individual citizens who got together to raise money

for their own fire protection. Up to the present, the paid staff of 13 constitutes a close-knit, informal operation.

However, testimony also reveals that the Commissioners are paid \$100 a year and are not full-time positions. Accordingly, the Captain who is in charge at the fire house becomes the eyes and ears of the Board, their vital administrative link with the fire fighter staff.

Further, as the Fire District move into the era of collective bargaining involving a true give and take at the bargaining table, a situation which has not obtained to date, the role of the captain as part of the management team evolves with this development. As the liason administrator between the Board and the men he must inevitably be privy to the strategy of the Board in matters of contract negotiations and/or grievance handling.

Therefore, despite the community of interest which the captain has with the firemen, the Hearing Officer recommends his exclusion from the firemen's unit. This determination flows from the fact that the captains "regularly assist and perform tasks for persons who now and hereafter will formulate, determine and/or effectuate management policies in the field of labor relations."^{2/}

Accordingly, while Section 7 of Chapter 303 states, "the negotiating unit shall be defined with due regard for community of interest..." it does not preclude the overriding nature of other considerations. A finding of confidentiality for the captain is in essence a finding of conflict, rather than community of interest, with other paid fire fighter personnel.

^{2/} Plainfield Board of Education and Plainfield Association of Educational Secretaries, PERC E.D. Decision #1.

RECOMMENDATION

Based on the foregoing, it is recommended that the appropriate unit for the purposes of collective negotiations between the Woodbridge Board of Fire Commissioners District No. 1 and the International Association of Fire Fighters Local #290 be composed of all firemen and the lieutenant employed by the Board; the unit shall not include the captains.


Sally Parker
Hearing Officer

Dated: October 30, 1970
Trenton, New Jersey