

D.R. NO. 2003-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

NEW JERSEY INSTITUTE OF TECHNOLOGY,
Public Employer,

-and-

Docket No. AC-2002-2

NEW JERSEY INSTITUTE OF TECHNOLOGY
SUPERIOR OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation amends the certification of the New Jersey Institute of Technology Superior Officers Association (SOA) to reflect its affiliation with the Fraternal Order of Police Labor Council, Inc. (FOP). The Director finds that the SOA had complied with the requirements for an amendment of certification as set forth in N.J.A.C. 19:11-1.6(b).

The Director rejects the employer's argument that the FOP's representation of both the rank-and-file police officers' unit and the SOA raises an impermissible conflict of interest since SOA members supervise the officers who comprise the FOP's non-supervisory unit. The SOA has filed a certification that it will maintain itself as a separate organization. Accordingly, the Director finds that the employer's argument that the supervisory unit would be dominated by the non-supervisory unit members is premature.

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Appearances:

For the Public Employer
Robert H. Avery, general counsel
(Holly Stern, associate general counsel)

For the Petitioner
Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

**AMENDMENT OF CERTIFICATION
OF REPRESENTATIVE**

On July 20, 2001, the New Jersey Institute of Technology Superior Officers Association (SOA) filed a Petition for Amendment of Certification with the Public Employment Relations Commission (Commission) pursuant to N.J.A.C. 19:11-1.6, seeking to amend its Certification of Representative to reflect its affiliation with the Fraternal Order of Police Labor Council, Inc. (FOP).

New Jersey Institute of Technology (NJIT) objects to the amendment. Specifically, it asserts that the FOP's representation of the rank-and-file police officers raises an impermissible conflict of interest since SOA members supervise the officers who

comprise the FOP's non-supervisory unit. NJIT also cites the fact that the SOA unsuccessfully attempted to intervene in the most recent interest arbitration of the patrol officers' negotiations. NJIT believes that the SOA will use the same FOP representatives in its negotiations as are used by the rank-and-file unit, once the affiliation is accomplished. NJIT argues that the use of the same representatives for both units' negotiations is improper, and that the Labor Council cannot "objectively and without conflict," serve as both units' representatives (NJIT letter dated August 15, 2001).

I have conducted an investigation into the matters raised by this petition. N.J.A.C. 19:11-2.2. There are no substantial, material facts in dispute which would require a hearing. N.J.A.C. 19:11-2.6(e). Based upon our investigation, I make the following:

FINDINGS OF FACT

The initial Certification, issued by the Commission on May 17, 1996, certified the SOA as the majority representative of a unit of all commissioned police sergeants employed by the New Jersey Institute of Technology. FOP Lodge 93 represents NJIT's rank-and-file police officers.

The SOA president has submitted an affidavit certifying that, after advance notice of the affiliation vote, the members voted unanimously by secret ballot election on February 14, 2001 to affiliate with the Fraternal Order of Police Labor Council, Inc. The SOA has also demonstrated that the composition of the

negotiations unit will continue unchanged and that there has been a complete transfer of union officers and members of the unit.

On February 2, 2002, the SOA president submitted a certification stating that the supervisory unit would control the negotiations for the unit, and that it would maintain itself separately from any non-supervisory organization.

On March 26, 2002, we advised the parties of our intent to approve the petition and invited their responses. NJIT responded on April 16, 2002 and SOA responded on April 29, 2002. NJIT raised new facts and a legal argument. NJIT asserts that the following exemplify the extent and manner by which the two organizations are not independent.

First, it alleges that the sergeants forestalled negotiations for the collective agreement effective from July 1995 through June 2001 until the interest arbitration process for the patrol unit was complete; and then, without negotiations, ultimately adopted the same economic and non-economic terms. The SOA disputes the stalling allegation and asserts that a dispute over merit pay caused some of the delay. NJIT provided no dates relating to this conduct but we note that the SOA 1995-2001 contract was signed in December 2000 -- before the SOA affiliated with FOP in February 2001. No unfair practice charges were filed concerning this alleged refusal to negotiate.

NJIT further alleges that the SOA unsuccessfully attempted to formally support the patrol unit's merit pay issue in the patrol

unit's interest arbitration proceeding. NJIT does not explain how this is evidence of the patrol unit's dominance of the SOA unit, nor does it appear to have occurred after the SOA had voted to affiliate with the FOP Labor Council.

NJIT also alleges that the same FOP attorney represented both a sergeant and patrol officer in a disciplinary matter in which both were being terminated for conduct arising from the same operative events. No time period or dates are provided as to this allegation. The FOP asserts that this disciplinary matter occurred prior to the SOA's affiliation vote. No unfair practice charge was filed concerning this allegation.

The next allegation is that the patrol unit has begun negotiations for a successor agreement whereas the SOA, whose agreement expired on the same date, has not made any demand to begin negotiations. The SOA attributes the alleged delay to NJIT's objection to the instant petition, and notes that the SOA would be interested in the outcome of the patrol officers' interest arbitration process whether or not it was affiliated with the FOP Labor Council.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides that, except for unusual circumstances not relevant here, supervisors are prohibited from representation by an organization with non-supervisory employees as members. In City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982) (Camden), the Commission recognized the need for safeguards

against the possibility that a rank-and-file police organization could interfere with or dominate the organization or negotiations of a superior officers organization affiliated with the same parent organization. Accordingly, it created a procedure for an organization seeking to represent supervisory employees. The organization must certify that it has a statutorily valid structure and it must agree to certain specific provisions as a condition of certification. Camden. The policy has been applied consistently in cases where this issue has arisen and has been approved by the New Jersey courts. See, Hudson Cty., D.R. No. 84-21, 10 NJPER 293 (¶15144 1984), lv. to app. den App. Div. Dkt. No. AM-944-83T2 (6/7/84); lv. to app. and stay den. S. Ct. Dkt. No. 22,796 (6/12/84); election objections dismissed and certification issued D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), affirmed App. Div. Dkt. No. NJPER Supp.2d 157 (¶138 App. Div. 1985); Jackson Tp., D.R. No. 92-32, 18 NJPER 317 (¶23134 1992) (certification amended for police superior officers unit); see also, City of Union City, D.R. No. 2000-16, 26 NJPER 319 (¶31129 1992) (certification amended for police superior officers unit).

NJIT argues that the Commission's acceptance of the Camden certification is inapposite to the law of this State. However, we are guided by Hudson Cty. wherein the Court noted that where a petitioner submits prima facie evidence that the representation it will provide will comply with N.J.S.A. 34:13A-5.3, a certification of representative should be issued, subject to the filing and

finding of an unfair practice should the petitioner not live up to its commitment. The Court found there that the claim that the supervisory unit would be dominated by the non-supervisory unit members was premature. Accord, Essex Cty. Voc-Tech. Bd. of Ed., D.R. No. 94-6, 19 NJPER 522 (¶24242 1993), rev. den., P.E.R.C. No. 94-48, 19 NJPER 584 (¶24278 1993), aff'd 21 NJPER 63 (¶26045 App. Div. 1995), certif. den. 141 N.J. 96 (1995).

As to NJIT's concerns that both FOP locals will use the same attorney, we will not speculate about the majority representative's future conduct. In UMDNJ, D.R. No. 98-2, 23 NJPER 440 (¶28202 1997), rev. den., P.E.R.C. No. 98-7, 23 NJPER 455 (¶28214 1997), we found that once an employee organization submits a Camden certification promising to represent supervisors and rank-and-file employees separately, we will presume that it will act in conformance with that certification. We declined to speculate on possible post-certification conduct. In UMDNJ, we specifically rejected the argument that an FOP supervisors' union was disqualified from representing police superiors because another FOP lodge represented the department's rank-and-file police officers. The fact that both lodges had retained the same attorney was not evidence of a conflict of interest. No circumstances exist here which persuade us to find otherwise.

The SOA has completed a certification agreeing to the Act's requirements. Specifically, the SOA agrees that it will be and act as a separate organization from any non-supervisory organization

representing NJIT employees; that the SOA, rather than the non-supervisory organization, will control the negotiations for and the administration of its contract; and finally, that it has no non-supervisory police officers as members.

NJIT relies on Freehold Reg. H.S. Dist. Bd. of Ed., D.R. No. 90-30, 16 NJPER 382 (¶21153 1990), where an NJEA affiliate seeking to represent supervisors asserted that, "...if necessary, it would not use the same attorneys or field representatives as those used by any non-supervisory NJEA locals which represent employees of the same Board." 16 NJPER at 382. However, our direction of an election among the supervisors did not depend upon the association's conditional assertion, nor have we suggested such a prohibition.

With regard to NJIT's concerns that the two FOP locals might use the same negotiations representatives, that assertion is also speculative. We note however, that while an employee organization is generally free to select its own negotiators as committee members, an employer may refuse to negotiate with a negotiations team purportedly representing supervisors, but in fact illegally dominated by non-supervisors. Rutgers Univ., P.E.R.C. 99-44, 25 NJPER 10 (¶30004 1998); Bor. of Somerville, P.E.R.C. No. 88-77, 14 NJPER 218 (¶19077 1988), aff'g H.E. No. 88-33, 14 NJPER 102 (¶19037 1988).

Based upon the foregoing, I find that the SOA has sufficiently complied with the Commission's Rules and procedures to obtain its amendment of certification. The SOA has demonstrated

that it has met the procedural requirements to record the affiliation with the FOP, and the SOA members were afforded due process in the affiliation election. Further, the SOA has certified that it will separately represent supervisors from rank-and-file employees. We will not refuse to certify an organization based upon conjecture concerning their future conduct. If the supervisors' organization illegally permits a non-supervisory affiliate to control its negotiations or contract administration, there are remedies available through the Commission's unfair practice procedures.^{1/}

Accordingly, the Certification of Representative is amended to reflect that the exclusive negotiations representative is now the New Jersey Institute of Technology Superior Officers Association, affiliated with the Fraternal Order of Police Labor Council, Inc.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Stuart Reichman
Director of Representation

DATED: August 7, 2002
Trenton, New Jersey

^{1/} See, e.g., Town of Kearny, P.E.R.C. No. 81-137, 7 NJPER 339 (¶12153 1981) (police union committed unfair practice by requiring that superiors officers' negotiations team be appointed by the officers they supervised).