

D.R. NO. 2000-13

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

In the Matter of

NORTH HUDSON REGIONAL FIRE & RESCUE,

Public Employer,

-and-

Docket No. AC-2000-1

NORTH HUDSON FIREFIGHTERS ASSOCIATION,

Employee Representative.

SYNOPSIS

The Director of Representation amends the certification of North Hudson Firefighters Association to reflect its affiliation with the International Association of Firefighters and the Firemen's Mutual Benevolent Association.

The Director found that the NHFA had complied with the requirements for amendment of certification as set forth in N.J.A.C. 19:11-1.6(b), and that its affiliation vote procedure provided minimum due process to its constituents. The Director declined to amend the NHFA certification to include Professional Firefighters Association of New Jersey because there was no evidence that the members voted on that affiliation.

The Director rejects the employer's argument that N.J.A.C. 19:11-1.6 does not permit affiliation with more than one organization. Finally, the Director found that the employer's argument that allowing the petitioned-for certification of amendment would create confusion in the parties' labor relations was speculative.

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Appearances:

For the Public Employer
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Employee Representative
Schneider, Goldberger, Cohen, Finn
Solomon, Leder, Montalbano, attorneys
(Bruce D. Leder, of counsel)

**AMENDMENT OF CERTIFICATION
OF REPRESENTATIVE**

On September 9, 1999, the North Hudson Firefighters Association (NHFA) filed a Petition for Amendment of Certification with the Public Employment Relations Commission pursuant to N.J.A.C. 19:11-1.6 et seq. NHFA, seeks to amend its certification to reflect its affiliation with the Professional Firefighters Association of New Jersey (PFANJ)/International Association of Firefighters (IAFF),^{1/} and the Firemen's Benevolent Association (FMBA).

^{1/} PFANJ is the New Jersey organizational component of the IAFF.

The North Hudson Regional Fire and Rescue (the Regional) objects to the proposed amendment. It asserts that the affiliation vote was "undemocratic" because the NHFA allegedly did not give members advance notice of the affiliation vote and did not conduct a secret ballot election. Regional also contends that the affiliation vote did not include a majority of NHFA members. Further, the Regional argues that N.J.A.C. 19:11-1.6 contemplates only one affiliation, thus, permitting multiple affiliations would throw the parties' labor relations into a "state of confusion." Finally, Regional asserts that the petition is defective on its face because it fails to state NHFA's reasons for the affiliation. The Regional asks that we dismiss the petition. Alternatively, it suggests that we conduct a hearing to examine the facts surrounding the affiliation vote and the "structure" to be established by the proposed multiple-party affiliation.

An administrative investigation was conducted pursuant to N.J.A.C. 19:11-2.2. The NHFA submitted a supporting affidavit dated September 3, 1999, a copy of the notice announcing the affiliation vote meeting, additional affidavits from NHFA members, and a statement of position. The Regional submitted a position statement opposing the petition along with a certification addressing a number of due process issues. On April 27, 2000, I summarized the facts and the parties' arguments and advised the parties of my intention to amend the NHFA certification, absent persuasive evidence to the contrary. Neither party filed additional submissions.

I find that there are no substantial and material factual issues in dispute which would require a formal hearing. N.J.A.C. 19:11-2.6(b) and (d). Accordingly, the disposition of the petition is properly based on our administrative investigation, which has found the following facts.

FACTS

In January 1999, the fire operations of five Hudson County municipalities merged and formed the North Hudson Regional Fire and Rescue for purposes of providing fire services to those communities. The Regional has been the employer of the firefighters since January 1999.

On March 16, 1999, following a secret ballot election, the Commission certified the NHFA as the exclusive representative of all firefighters employed by North Hudson Regional Fire and Rescue. At that time, there were approximately 200 unit members. The size and structure of the unit has remained basically the same since the certification. (See September 3 and December 17 affidavits of NHFA's President Bill Willard.)

By no later than June 21, 1999, notices were posted by representatives of the NHFA announcing a "General Meeting" for June 30, 1999. The notice announced the business to be conducted including "a vote for affiliation with IAFF and FMBA". NHFA members Patrick Cardanali and Robert Morrison attest that they personally posted the notices for unit members at 18 specifically identified

work locations. Willard also attests that he personally visited every firehouse operated by Regional before the June 30 election and observed that the notices had been posted. The notice informed NHFA members that the affiliation vote meeting would take place on June 30, 1999 at 7:30 p.m. at the Elk's Club at 50th Street and Blvd. East in Weehawken.

As further attested to by Willard, a secret ballot affiliation vote took place at the June 30 meeting. Only those present at the meeting were eligible to vote. The vote was 43 to 0 in favor of affiliation. Willard also attests that since the June 30 affiliation vote, there has been no change in NHFA officers or unit structure.

The Regional submitted a certification from its executive director of operations in which he states that he visited firehouses in Regional during the month of June on many occasions and did not observe notices posted at those firehouses announcing a meeting for NHFA members concerning an affiliation vote. Likewise, he had not seen such notices posted in the administrative offices where certain firefighters are assigned duties. In his certification, the executive director states that after the filing of the instant petition he questioned the two firefighters assigned to the administrative offices about whether they had seen any notices. Neither of these employees was identified in the director's certification. They assertedly responded that they were "not aware" of any notices. A third unidentified firefighter at one of the

firehouses was also questioned by the executive director. One of the two firefighters in the administrative offices and the firefighter from the firehouse assertedly told the executive director that they had received phone calls at home and had been asked to vote on whether the NHFA should affiliate with the PFANJ/IAFF and FMBA. There is no indication whether the two who were allegedly called actually voted. The third was not called and did not vote.

In his December 17, 1999 affidavit, NHFA's Willard denies that any telephone poll was conducted by the NHFA and attests that only those present at the June 30 meeting could vote on the affiliation.

ANALYSIS

N.J.A.C. 19:11-1.6(b) provides that a Petition for Amendment of Certification shall include:

1. The name of the employer and the name of the certified employee organization involved;
2. The address of the public employer;
3. An identification and description of the existing certification;
4. A statement by the petitioner setting forth the reason for the desired amendment;
5. The name, the affiliation, if any, and the address of the petitioner;
6. Any other relevant facts; and
7. This dated and signed certification by the petitioner or its representative: "I declare

that I have read the above petition and that the information is true to the best of my knowledge and belief."

N.J.A.C. 19:11-1.6(c) requires such a petition to be supported by an affidavit attesting that the membership of the certified employee representative voted in favor of the change in name and affiliation. Such affidavit shall specify that:

1. The membership was given advance notice of the election;
2. The election was conducted by secret ballot;
3. A majority voted in favor of the change in name and affiliation; and
4. The organization's officers and the unit structure remain unchanged.

In Parsippany-Troy Hills Township, P.E.R.C. No. 94-119, 20 NJPER 279 (¶25141 1994), denying req. for rev. of D.R. No. 94-20, 20 NJPER 180 (¶25079 1994), the Commission reiterated the standards for considering a Petition for Amendment of Certification. The Commission noted,

...an amendment of certification will be granted if the petitioning organization demonstrates that after proper notification, the union's unit membership voted by secret ballot to approve the name change and there is continuity in the unit's composition and leadership. ...[W]e emphasize that this amendment of certification is essentially a name change. [20 NJPER at 280.]

Additionally, to record an affiliation, an employee organization is required to provide a procedure which affords the membership with a degree of due process. Adequate due process will be found where the affiliation procedures provide for an opportunity

for debate among members prior to the vote, the membership participates and the election is not inaccessible to the membership in timing and/or location. Parsippany, 20 NJPER at 180. Applying the standards to the facts in Parsippany, the Director found that the Association in that case had complied with the requirements for certification amendment and satisfied the minimum due process standard when it provided 10 days advance notice of the affiliation vote, conducted a secret ballot vote, and certified that the officers in place before the vote remained in office after the affiliation vote.^{2/}

I find that the NHFA has complied with requirements for amendment of certification and minimum due process. The NHFA posted notices in numerous locations announcing the affiliation vote at least 9 days prior to the time the vote took place on June 30.^{3/}

^{2/} Contrast Middletown Township, et al., P.E.R.C. No. 2000-47, 26 NJPER 59 (¶31020 1999), where the Commission found that the organization had failed to meet the due process requirements to have its organizational merger considered.

^{3/} While the Regional's executive director certifies that he saw no notices posted at an unspecified number of locations or times, these statements are not sufficient to support a conclusion that notices were not posted, particularly in light of affidavits from employees who assert they personally posted or observed the notices at numerous locations at least by June 21, 1999. The executive director allegedly spoke with three firefighters concerning the affiliation; two were assigned to the administrative offices and the third worked at a firehouse. Regional alleged that neither of the firefighters assigned to the administrative offices had seen the notices concerning the affiliation.

These postings provided members with adequate advance notice of the affiliation vote. The NHFA conducted a secret ballot vote at the June 30 meeting. The structure of the unit has remained the same, as have the NHFA officers. Moreover, there is no claim that unit employees were not provided with an opportunity to debate the affiliation issue, that they were denied the opportunity to vote if they attended the June 30 meeting, or that the meeting time and/or location was so inconvenient that it discouraged members from attending.

The number of unit members voting in the affiliation vote totalled 43. The number of employees represented by NHFA was approximately 200 at the time of the original Commission certification and remains close to that number now. Having found that the NHFA complied with due process notice requirements, the number of voters alone does not establish a failure in the notice or voting process which would require dismissal of the instant petition.

The Regional also argues that to allow an amendment of certification which reflects affiliation with more than one other

3/ Footnote Continued From Previous Page

Regional further alleged that one firefighter serving in the administrative offices and the firefighter assigned to the firehouse received phone calls for the purpose of polling them regarding the affiliation. Regional's statements are otherwise unsubstantiated by any further documentation, and as such are not relied upon in my determination of the issues herein. Even crediting Regional's allegations that several firefighters did not see the notices, such assertions do not establish that, in fact, the notices were not posted.

organization would not comport with the use of the word "affiliation", in the singular, in N.J.A.C. 19:11-1.6. The Regional views affiliation with more than one other organization as leading to potential confusion in the parties' labor relations.

The Commission and the National Labor Relations Board (NLRB) have allowed two or more labor organizations to represent employees as joint representatives for collective negotiations. AFSCME v. PERC., NJPER Supp.2d 14 (16 App. Div. 1973); NLRB v. National Truck Rental Co., 239 F.2d. 422 (1956), cert. den. 755 S. Ct. 561 (1957). Moreover, the Board has interpreted the use of "labor organization" in the singular as merely referring to an "entity" and not limiting the number of representatives who may jointly represent employees. National Truck Rental. In the instant case, I likewise interpret the use of the singular in N.J.A.C. 19:11-1.6 in referring to "affiliation" of the exclusive representative as describing the resultant "entity" established by the vote for affiliation, not as limiting the number of organizations with which the exclusive representative may be affiliated. There is no evidence of a current struggle between these labor organizations with which the NHFA seeks to affiliate concerning which single organization will represent unit employees. Additionally, the NHFA has certified that there is, and will continue to be, continuity in its structure, and that there will be no change in its role as the negotiations representative. See County of Cape May Assignment Judge, P.E.R.C. No. 85-80, 11 NJPER 91

(¶16039 1985). Thus, Regional's argument that allowing the petitioned-for certification amendment will create confusion in the parties' labor relations is premature. I do not speculate that the NHFA will disregard its affirmative obligation to represent unit employees and negotiate with Regional as the exclusive representative of those employees merely because it has changed its name to record an affiliation with the IAFF and FMBA.^{4/}


Finally, the Regional asserts that the petition is defective on its face for "failure to state a reason for affiliation." N.J.A.C. 19:11-1.6(b)(4) requires an Amendment of Certification petition to contain a reason for the filing of the petition. NHFA has stated its reason for filing--to record its affiliations with IAFF and FMBA. Thus, I find that the Rule section has been satisfied.

To the extent that the Regional appears concerned with whether the NHFA has an "underlying objective" which may affect negotiations, I do not speculate on such an "underlying objective." I find no reason to go beyond the reason for affiliation asserted by the NHFA in its November 9, 1999 position statement, namely that the affiliation is to secure fraternal support and advice from those organizations named.

^{4/} C.f., State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), aff'g D.R. No. 81-20, 7 NJPER 41 (¶12019 1981), where a schism developed between jointly certified employee representatives, the employer had a basis for filing a representation petition questioning the continued majority status of the jointly certified representatives. See also, AFSCME v. PERC.

Thus, I find that the Regional's objections to the affiliation are insufficient to deny the amendment of certification. Therefore, in accordance with N.J.A.C. 19:11-2.6(b)(5), I amend the NHFA certification to reflect its affiliation with the IAFF and the FMBA.^{5/}

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Stuart Reichman, Director

DATED: May 22, 2000
Trenton, New Jersey

^{5/} Although the NHFA also asked in its Petition to record an affiliation with PFANJ, there is no evidence presented that the employees had an opportunity to vote on this affiliation. Therefore, I decline to amend the certification to show an affiliation with PFANJ.