

D.R. NO. 2004-003

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

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF CORRECTIONS),

Public Employer,

-and-

Docket No. AC-2004-2

NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION, INC.,

Petitioner.

SYNOPSIS

The Director of Representation amends the certification of the New Jersey Law Enforcement Supervisors Association, Inc. (LESA) to reflect its disaffiliation from the New Jersey State Policemen's Benevolent Association, Inc. (PBA) and its affiliation with the New Jersey Fraternal Order of Police (FOP). The Director found that LESA 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 expressed caution about organizations switching their affiliations from one parent organization to another through an amendment of certification process. However, he determined that in this limited circumstance, the amendment was appropriate where the previously certified affiliate organization does not oppose the amendment and has disclaimed further representational interest.

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Appearances:

For the Public Employer,
David Samson, Attorney General
(Stephan M. Schwartz, Deputy Attorney General)

For the Petitioner,
Kusnirik & Fornaro, attorneys
(Richard D. Fornaro, of counsel)

AMENDMENT OF CERTIFICATION

On September 10, 2003, the New Jersey Law Enforcement Supervisors Association, Inc. (LESA) filed an Amendment of Certification Petition with the Public Employment Relations Commission seeking to record its disaffiliation with the New Jersey State Policemen's Benevolent Association, Inc. (PBA) and its affiliation with the New Jersey Fraternal Order of Police (FOP). The AC Petition was accompanied by an affidavit from LESA President Robert Cardone attesting to the facts in this matter and supplying supporting documentation.

In correspondence dated September 16, 2003 I advised both the State of New Jersey and the PBA regarding the proposed amendment and requested a statement indicating whether they had any objection to the proposed amendment. The State raises no object to the Petition. The PBA does not object to the petition and disclaims further representational interest in the LESA unit.

I have conducted an investigation into the matters raised by this petition. N.J.A.C. 19:11-2.2. I make the following:

FINDINGS OF FACT

1. On May 25, 1978, the Commission certified the New Jersey Law Enforcement Primary Level Supervisors Association affiliated with the New Jersey State Policeman's Benevolent Association, Inc. as the exclusive representative of a unit of law enforcement superior officers, including various sergeant titles, employed by the State. Subsequently, on December 3, 1986 the Commission amended the certification of representative to reflect the change of name to New Jersey Law Enforcement Supervisors Association (LESA) affiliated with the N.J. State P.B.A., Inc.

2. Prior to the filing of this petition, LESA and the PBA agreed to employ the services of Election.com to impartially conduct an affiliation vote to determine whether the membership wished to disaffiliate from the PBA and affiliate with the FOP. Specifically, Election.com was hired to issue notices to the

employees of informational sessions, mail ballots to unit members, and collect and count the ballots.

3. On June 18, 2003 the State Office of Employee Relations issued a list of negotiations unit members to Election.com as well as to LESA and the PBA.

4. On June 20, 2003, Election.com mailed notices to all negotiations unit members regarding the date, time and place of informational sessions to discuss the issues raised by disaffiliation from the PBA and affiliation with the FOP. The form of the notices was approved by both LESA and the PBA.

5. Informational sessions were conducted on two separate dates, one in northern New Jersey and one in southern New Jersey, shortly prior to the commencement of the election.

6. The form of the ballot was agreed to by all parties. The ballot posed two yes/no questions:

Question #1 stated: Shall the New Jersey Law Enforcement Supervisors Association, Inc. terminate its affiliation with the New Jersey State Policemen's Benevolent Association, Inc.

Question #2 stated: Shall the New Jersey Law Enforcement Supervisors Association, Inc. affiliate with the New Jersey Fraternal Order of Police.

Each voter was instructed to only proceed to ballot question #2 if he/she voted "yes" to Question #1. Election.com only

tallied Question #2 if the voter's answer to Question #1 was "yes."

7. On July 7, 2003 Election.com mailed ballots to all negotiations unit members. In order to maintain the secrecy of the vote, voters were instructed not to sign the ballot and to return it in the sealed self-addressed envelope to Election.com by July 23, 2003.

8. Election.com tallied the ballots. The vote resulted in 268 votes in favor of terminating the affiliation with the PBA and 66 opposing. The tally of question #2 revealed that 258 voted in favor of affiliation with the FOP and 8 voted against affiliation.

9. LESA's President affirms that the organization's officers and unit structure will remain unchanged.

ANALYSIS

The Commission's rules establish procedures for amending certifications and our case law establishes the standards for granting such petitions. N.J.A.C. 19:11-1.6; Parsippany-Troy Hills Tp., P.E.R.C. No. 94-119, 20 NJPER 279 (¶25141 1994), denying req. for rev. of D.R. No. 94-20, 20 NJPER 280 (¶25079 1994); Cape May Assignment Judge, et al., P.E.R.C. 85-60, 11 NJPER 91 (¶16039 1985). N.J.A.C. 19:11-1.6(c) requires an Amendment of Certification 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/or affiliation. Such affidavit must 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/or affiliation; and
4. The organization's officers and the unit structure remain unchanged.

Additionally, to record an affiliation, an employee organization is required to show that its affiliation procedure afforded the membership with a degree of due process. Adequate due process will be found where the affiliation procedures provide the members with advance notice of the affiliation vote, an opportunity to discuss the affiliation prior to the vote, and the chance to participate in the affiliation election. Township of Middletown, et. al., P.E.R.C. No. 2000-47, 26 NJPER 59, 60 (¶31020 1999); State of New Jersey, D.R. No. 2003-2, 28 NJPER 356 (¶33128 2002).

The amendment of certification process is not appropriate where the issue is not merely a name change, but rather a struggle between two employee organizations over which will represent the unit employees. Parsippany; Cape May Assignment Judge. Here, LESA seeks to record its disaffiliation from the PBA and to amend its certification to reflect its affiliation

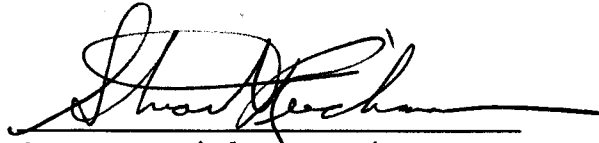
with the FOP. While we are always cautious about organizations switching their affiliations from one parent organization to another through an amendment of certification process, in this limited circumstance, where unit members have clearly expressed their intention through a procedure where all due process elements have been satisfied and where the previously certified affiliate organization does not oppose the amendment and has disclaimed further representational interest, we have granted an amendment of certification. See generally, State of New Jersey, D.R. No. 2003-2, 28 NJPER 356 (¶33128 2002) (where the New Jersey Superior Officers Law Enforcement Association (SOA), the organization representing a State-wide unit of corrections lieutenants, sought to change its certification to reflect its change in affiliation from the PBA to the FOP. In granting the affiliation, after establishing the requisite compliance with our rules and adequate due process, we found that the SOA was a de facto independent organization at the time it sought to affiliate with the FOP because the PBA disclaimed any interest in representing the SOA.)

Here, LESA has demonstrated compliance with our rules and adequate due process. Additionally, neither the State nor the PBA opposes the Petition, and PBA disclaims further representational interest in the LESA unit. Therefore, based on the foregoing an amendment of certification is granted.

ORDER

The Certification of Representative is amended to reflect that the exclusive negotiations representative is now the New Jersey Law Enforcement Supervisors Association, Inc. affiliated with the New Jersey Fraternal Order of Police.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman, Director

DATED: September 30, 2003
Trenton, New Jersey