

D.R. NO. 2003-17

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

NJ LAW ENFORCEMENT SUPERVISORS  
ASSOCIATION,

Docket No. AC-2003-2

Petitioner,

-and-

NJ LAW ENFORCEMENT SUPERVISORS  
ASSOCIATION a/w NJ STATE PBA,

Intervener.

**SYNOPSIS**

The Director of Representation declines to issue an amendment of certification where the requirements of N.J.A.C. 19:11-1.6 had not been met. The petitioner failed to demonstrate that it gave adequate notice to employees and opportunity to discuss the issue of affiliation prior to the commencement of the election, and that it conducted a secret ballot election.

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Appearances:

For the Respondent,  
Genova, Burns & Vernoia, attorneys  
(Kevin P. McGovern, of counsel)

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

For the Intervener,  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,  
attorneys  
(Robert A. Fagella, of counsel)

**DECISION**

On February 28, 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).

In correspondence dated March 11, 2003, I advised the Petitioner that additional information was needed demonstrating the following:

(1) There was adequate, advance notice to the membership of the certified representative that a meeting of the members would be held on a specified date for the purpose of discussing and voting on the question of the certified representative's affiliation.

(2) A secret ballot election was held on a specified date on the question of whether or not the certified representative should affiliate with the Petitioner, including the number of votes in favor of affiliation and the number opposed to affiliation.

(3) The composition and approximate size of the collective negotiations unit represented by the certified representative has continued unchanged since the affiliation vote was taken.

(4) The officers of the certified representative have continued as officers since the affiliation change, although such officers may now hold different titles.

At Petitioner's request, an extension of time was granted until April 3, 2003 for its submission.

On March 6, 2003 the PBA, as the parent organization of the certified representative, requested to intervene pursuant to N.J.A.C. 19:11-2.7. The PBA opposes the petition. It asserts

that the petition should be dismissed for failure to comply with N.J.A.C. 19:11-1.6. Specifically, the PBA contends that there was no secret ballot election conducted in accordance with our Rules. On March 11, 2003 I approved the request to intervene.

On April 3, 2003 Petitioner filed a supplemental submission together with affidavits and exhibits in response to my request for additional information. The submission demonstrates the following:

1. On December 11, 2002, at a regular, monthly, general membership meeting of LESA, a motion was made and passed to commence a ballot process to determine whether to continue affiliation with the PBA, conduct business as an independent organization or affiliate with the FOP.

2. On December 12, 2002 the Executive Board of LESA distributed ballots to its institutional/local representatives for dissemination to LESA members at each facility with instructions to return the ballots by December 23, 2002 to their local representatives.

3. A sample ballot demonstrates that each ballot contained three options: (a) NJLESA should remain affiliated with the New Jersey State Policemen's Benevolent Association (PBA), (b) NJLESA should conduct business as an independent labor union (no affiliation), or (c) NJLESA should affiliate with the Fraternal

Order of Police (FOP). The ballots also contained a signature line for the voter's name.

4. The balloting process was in conformance with NJLESA normal operating procedures.

#### **ANALYSIS**

Petitioner did not comply with the requirements for amendment of certification set forth in N.J.A.C. 19:11-1.6. It has not demonstrated that adequate due process was afforded the membership of the certified representative.

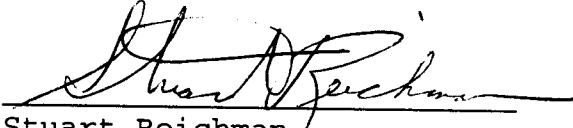
First, adequate due process requires providing the members with advance notice of the affiliation vote and an opportunity to discuss the affiliation prior to the vote. Township of Middletown, et. al., P.E.R.C. No. 2000-47, 26 NJPER 59, 60 (¶31020, 1999); State of New Jersey, D.R. No. 2003-2, 28 NJPER 356 (¶33128 2002). Specifically, Petitioner has not shown that LESA members were notified in advance of the December 11 general membership meeting that the question of affiliation would be discussed or, even, that it was discussed during the meeting. There only appears to have been a motion made and passed to commence a vote on the issue of affiliation. There was inadequate advance notice to employees prior to the commencement of the election (i.e., when union representatives began to distribute ballots).

However, even if there were adequate, advance notice and opportunity to discuss, Petitioner has not demonstrated that it conducted a secret ballot election as required by N.J.A.C. 19:11-1.6. Compliance with LESA's internal operational guidelines does not meet the Commission's Rule requirement regarding secret ballot elections. It is axiomatic that a ballot requiring a voter's signature is not a "secret" ballot.

For the foregoing reasons, I will not issue an amendment of certification in this case.

**ORDER**

The petitioner's application to amend its Certification of Representative is denied.

  
Stuart Reichman  
Director of Representation

DATED: April 9, 2003  
Trenton, NJ