

D.R. NO. 2003-2

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

Docket No. AC-2002-7

NEW JERSEY SUPERIOR OFFICERS LAW
ENFORCEMENT ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation amends the certification of the New Jersey Superior Officers Law Enforcement Association (SOA) to reflect its affiliation with the New Jersey Fraternal Order of Police (FOP).

The Director found that the SOA had complied with the requirements for amendment of certification as set forth in N.J.A.C. 19:11-1.6(b). Additionally, he found that its affiliation procedures provided the membership with adequate due process, namely advance notice of the affiliation vote, an opportunity to discuss the affiliation before the vote, and the chance to participate in the affiliation election. Finally, the Director found that although the SOA had not amended its certification to reflect its disaffiliation from the New Jersey State Policemen's Benevolent Association (PBA), it was a de facto independent organization after its expulsion by the PBA. Neither the State nor the PBA raised objections to the petition.

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Appearances:

For the Public Employer
Governor's Office of Employee Relations
(John Nuttal, Employee Relations Coordinator)

For the Petitioner
Mario A. Iavicoli, attorney

AMENDMENT OF CERTIFICATION
OF REPRESENTATIVE

On April 12, 2002, the New Jersey Superior Officers Law Enforcement Association (Association) filed an Amendment of Certification Petition 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 New Jersey Fraternal Order of Police (FOP). The Association asserts it disaffiliated from the New Jersey State Policemen's Benevolent Association (PBA) after it was expelled by the PBA in 2001 after a dispute over the solicitation of funds.

I have conducted an investigation into the matters raised by this petition. N.J.A.C. 19:11-2.2. Neither the public employer, State of New Jersey, nor the PBA objects to the petition. I make the following:

FINDINGS OF FACT

On May 25, 1978, the Commission certified the New Jersey Superior Officers Law Enforcement Association, affiliated with New Jersey PBA as the exclusive representative of a unit of law enforcement superior officers, including various lieutenant titles, employed by the State.

The Association's president has submitted an affidavit certifying that the PBA expelled it from membership over a dispute regarding the solicitation of funds. By letter dated January 11, 2002, State PBA President Michael Madonna confirmed the Association's expulsion and disaffiliation. That disaffiliation was not recorded through the filing of an amendment of certification petition.

At the Association's February 12, 2002 regular membership meeting, the general membership discussed and passed a motion resolving to conduct an election to decide the Association's future affiliation, if any. Thereafter, on or about March 4, 2002, the Association mailed its monthly newsletter, which included a special notice announcing the affiliation vote to all Association members.

At the monthly general membership meeting held on March 12, 2002 it was announced that affiliation vote ballots would be mailed to all members on March 14, 2002. The deadline for the return of the ballots was set for April 9, 2002. The ballots were mailed and counted in accordance with the announcement. Of the 356 ballots mailed to members, 250 were returned. Of the 191 valid votes counted, 174 votes were cast in favor of affiliation with the FOP.

The Association president also affirms that the Association's officers and the composition of the negotiations unit has remained unchanged since the affiliation with FOP.

We advised both the PBA and the State regarding the proposed amendment. On May 21 and June 28, 2002 respectively, the State and PBA responded. Neither has raised any objections to the petition.

ANALYSIS

The Commission's rules establish procedures for amending certifications and our caselaw establishes the standards for granting such petitions. N.J.A.C. 19:11-1.6; Parsippany-Troy Hills Twp., 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 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.

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); Parsippany Troy Hills Tp., 20 NJPER at 280; No. Hudson Reg. Fire and Rescue, D.R. No. 2000-13, 26 NJPER 257 (¶31101 2000).

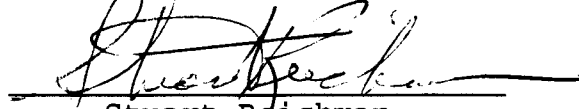
We have emphasized that the amendment of certification is essentially used to record a name change in the exclusive representative. Where the issue is not merely a name change, but rather a struggle between two employee organizations over which will represent the unit employees, an amendment of certification is not appropriate. Parsippany; contrast Cape May Assignment Judge. Therefore, we are cautious about organizations switching their affiliations from one parent organization to another through an amendment of certification. In Tp. of Hamilton, D.R. 2002-12, 28 NJPER 224 (¶33079 2002), I declined to amend a certification where

the petitioning "independent" union sought to record its disaffiliation from the "parent" organization, Teamsters Local 331. In that matter, the membership vote had not been limited to the disaffiliation question; Local 331 objected to the alleged disaffiliation and it claimed to continue to be the majority representative. Also, there was no continuity of the organization's leadership since Local 331's president would not continue to act as president of independent.

Here, I am satisfied that the SOA has met all of the requirements for amendment of certification and has afforded its members adequate due process. Although the SOA had not sought to amend its certification to record the disaffiliation, the SOA was a de facto independent organization after its expulsion by the PBA. The PBA confirmed that the SOA was disaffiliated and that the PBA no longer claimed to be the majority representative of the unit employees. Further, in contrast to the facts in Hamilton Tp., the SOA had already established its independent status prior to the membership vote to affiliate with the FOP. The SOA membership voted on the single question of affiliation. Therefore, in this case, the amendment of certification is appropriate to change the SOA's change in affiliation. Further, the SOA officers and the structure of the negotiations unit will remain unchanged since the affiliation election. There was notice of the election adequate to permit members an opportunity to discuss the issue prior to the vote and, subsequently, to vote on the proposed affiliation. Neither the State nor the PBA object to the proposed amendment.

Accordingly, the Certification of Representative is amended to reflect that the exclusive negotiations representative is now the New Jersey Superior Officers Law Enforcement Association 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", is written over a horizontal line.

Stuart Reichman
Director of Representation

DATED: August 9, 2002
Trenton, New Jersey