

D.R. NO. 2020-3

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

In the Matter of

SOUTH ORANGE VILLAGE TOWNSHIP,

Public Employer,

-and-

Docket No. AC-2019-002

TEAMSTERS LOCAL 125,

Petitioner.

**SYNOPSIS**

The Director of Representation dismisses an Amendment of Certification Petition filed by Teamsters Local 125 (Local 125) seeking to amend the Certification of Representative issued to South Orange Municipal Employees Union (SOMEU) for a negotiations unit of clerical and blue collar employees of the Township of South Orange Village (Township). Neither SOMEU nor the Township opposed the petition.

The Director finds that Local 125 is a separately existing organization from SOMEU, rather than the same organization with a different name or affiliation relationship and that, under the totality of the facts, there is no continuity of representation between the petitioner and the certified organization. The Director holds that a lack of continuity of representation presents a question concerning representation regardless of the non-opposition of the certified organization and the employer, and that Local 125 must instead seek either voluntary recognition by the Township or a new Certification of Representative pursuant to a timely-filed representation petition.

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Petitioner.

Appearances:

For the Public Employer,  
Apruzzese McDermott Mastro & Murphy, attorneys  
(Arthur R Thibault, of counsel)

For the Petitioner,  
Oxfeld Cohen, attorneys  
(Sanford R. Oxfeld, of counsel)

**DECISION**

On March 13, 2019, Teamsters Local 125 (Local 125) filed an Amendment of Certification Petition, seeking to amend the name of the certified exclusive representative, South Orange Municipal Employees Union (SOMEU). The petition was signed by Tony Petillo, President of Local 125. The petition identified the certified unit as all regularly employed non-supervisory clerical and blue collar employees of the Township of South Orange Village (Township). The petition provided that the representative for SOMEU is its president, Kenneth Greene and that Sanford Oxfeld, Esquire, is counsel for both Local 125 and SOMEU. The reason

given on the petition for the proposed amendment was that "the members of SOMEU overwhelmingly voted on February 26, 2019 to affiliate with Local 125."

The petition was accompanied by an affidavit from Greene (Greene Aff.) and a certification from Oxfeld (Oxfeld Cert.). Among other things, the documents revealed the following circumstances. Kenneth Greene is currently the President of SOMEU. (Greene Aff. ¶1). On February 19, 2019, SOMEU conducted a membership meeting to discuss affiliating with Local 125. (Greene Aff. ¶3). A notice of the upcoming vote was distributed at this meeting and sent to all members at their last known home address. (Greene Aff. ¶3). On February 26, 2019, a secret ballot election was held to determine if the membership of SOMEU desired to affiliate with Local 125. (Greene Aff. ¶2, 4; Oxfeld Cert. ¶1, 2). According to Oxfeld, 37 voted "for Teamsters Local 125" and 3 voted "for South Orange Municipal Employees Union." (Oxfeld Cert. ¶3). Local 125 "won the election." (Oxfeld Cert. ¶4). The unit structure will remain unchanged. (Greene Aff. ¶6). Greene will remain an officer representing the negotiations unit until Local 125 "can take full control of this unit." (Greene Aff. ¶7). SOMEU does not object to the change. (Greene Aff. ¶7).

The petition was not accompanied by other items required by N.J.A.C. 19:11-1.6(c), specifically, a copy of the election

notice that was given to the membership; a copy of the ballot that was used; a document setting forth the results; and a statement that all the organization's officers remained unchanged.

On March 15, 2019, the assigned Commission staff agent sent a letter to Local 125, requesting these documents by March 22, 2019. The letter also advised that the petition may be improper because it appeared that the vote conducted was to select a new organization to be the majority representative rather than to change the name or affiliation of the existing certified organization.<sup>1/</sup> (Greene had affirmed that he would not continue as president of Local 125; that Local 125 had its own president who would remain in that position; that Oxfeld certified the votes were either "for Teamsters Local 125" or "for South Orange Municipal Employees Union", rather than for or against affiliation; and that Local 125 had "won" the election). The letter further noted that if an amendment of SOMEU's certification were not possible, Local 125 could seek the Township's voluntary recognition of it as the majority

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1/ Where the continuity of the representative is not assured, the proposed change raises a question concerning representation that may only be considered upon the timely filing of a representation petition, not by a petition to amend the certification. Gas Serv. Co., 213 NLRB 932, 87 LRRM 1226, 213 NLRB No. 123 (October 8, 1974), cited in Cape May Cty., et al., P.E.R.C. No. 85-80, 11 NJPER 91 at n.4 (¶16039 1985).

representative<sup>2/</sup> or file a representation petition for certification after SOMEU's one-year certification bar expired.<sup>3/4/</sup>

On March 20, 2019, Counsel requested and was provided an extension of time to respond by April 1, 2019. On March 27, 2019, Counsel provided a new certification from Greene (Greene Cert.), a copy of the election notice, a copy of the ballot, and a copy of the tally setting forth the results. Counsel also wrote that Local 125 had fully complied with the procedures and standards set forth in Cumberland Cty. Bd. of Social Services,

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2/ An employer must cease negotiations during the pendency of a question concerning representation between two organizations. Bergen Cty., P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983). Absent a disclaimer of interest from the incumbent, an employer commits an unfair practice if it voluntarily recognizes another organization during the pendency of a question concerning representation after a representation petition has been filed or if the recognized organization does not in fact represent a majority of unit employees. See Bruckner Nursing Home, 262 NLRB 955, 110 LRRM 1374, 262 NLRB No. 115 (July 16, 1982), cited in Bergen Cty.

3/ A valid question concerning representation may be raised during the certification year if there is evidence that the incumbent organization is defunct. Jersey City Bd. of Ed., P.E.R.C. No. 79-15, 4 NJPER 455 (¶4206 1978). See also Brooks v. NLRB, 348 U.S. 96, 98, 75 S. Ct. 176, 178, 99 L.Ed. 125, 131 (1954); In re Pub. Serv. Elec. and Gas Co., 59 NLRB 325, 15 LRRM 152, 59 NLRB No. 69 (November 16, 1944).

4/ I take administrative notice that the Director issued a Certification of Representative to SOMEU on November 4, 2018, after it prevailed in a secret ballot election against the prior representative, OPEIU Local 32. (Dkt. No. RO-2019-011).

D.R. No. 2006-10, 32 NJPER 33 (¶16 2006); that there was no competing union seeking to represent the unit; and that a "Certification of Representati[ve] to reflect Teamsters Local 125 as the exclusive negotiations representative of unit members" was anticipated.

The new certification of Greene added the following facts. When Greene began working for the Township, the negotiations unit was represented by OPEIU Local 32. (Greene Cert. ¶3). Greene joined OPEIU Local 32 when he became a full-time employee in or about 1999. (Greene Cert. ¶3). He became Chief Steward for OPEIU in 2018. (Greene Cert. ¶4). During this time, on behalf of other employees, he began to seek alternative representation. (Greene Cert. ¶4). Oxfeld advised him that "the best and easiest thing to do" would be for the employees to form their own union. (Greene Cert. ¶5). Oxfeld drafted bylaws for SOMEU and filed a representation petition on behalf of SOMEU with the Commission for an election. (Greene Cert. ¶5).

Greene's supplemental certification provides that "almost immediately" after SOMEU was first certified on November 14, 2018, he realized that he "had bitten off more than [he] could chew," meaning that SOMEU faced significant issues regarding possible municipal agreements for shared services, dues collection, and negotiations for a full contract (rather than

addendums that had been negotiated since 2004). (Greene Cert. ¶6).

Greene promptly contacted the President of Local 125, Tony Petillo. (Greene Cert. ¶7). They met with officers of Local 125 and agreed that "affiliation" with Local 125 was what they wanted. (Greene Cert. ¶7). Both unions authorized counsel (of record) to proceed with an "affiliation" pursuant to Commission rules and procedures.

Greene certifies that, on February 19, 2019, a membership meeting was held to discuss the issue of whether SOMEU "membership desired to become affiliated with Teamsters Local 125," and to distribute a notice for the upcoming election scheduled for February 26, 2019. (Greene Cert. ¶11, 12). On February 20, 2019, Oxfeld sent the notice to all SOMEU members at their last known home address. (Greene Cert. ¶12). The notice provided:

A vote will be held at 4:30 PM on Tuesday, February 26, 2019 At The Baird Community Center to determine if the membership of the South Orange Municipal Employees Union desires to affiliate with TEAMSTERS LOCAL 125. This secret ballot vote will be conducted pursuant to the rules of THE NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION.

[Greene Cert. Exhibit A (capitalization in original)]

On February 26, 2019, between 4:30 p.m. and 5:00 p.m., Greene oversaw the election. (Greene Cert. ¶11). The election was conducted by a secret ballot. (Greene Cert. ¶13). The ballot provided:

"FOR CERTAIN EMPLOYEES OF TOWNSHIP OF SOUTH ORANGE VILLAGE Please Select Which Organization You Choose To Be Your Representative: International Brotherhood of Teamsters Local 125 [or] South Orange Municipal Employees Union."

[Greene Cert. Exhibit B (capitalization in original)]

Another SOMEU member, Daniel Koenemund, and Oxfeld also observed the election. (Greene Cert. ¶15). Greene counted the votes in Koenemund's presence and Oxfeld kept the running tally. (Greene Cert. ¶15). The tally shows 37 members voted Local 125 and 3 members voted for SOMEU. (Greene Cert. ¶10, 14, Exhibit C). Greene then instructed Oxfeld to file the petition to amend SOMEU's certification. (Greene Cert. ¶13).

Greene certifies that the negotiations unit of all Township clerical and blue collar employees will remain the same, that there are approximately 53 members of the negotiations unit, and that he will remain an officer of this unit, ". . . until such time as Teamsters Local 125 can take full control of this unit," and the Commission "recognizes our affiliation with Local 125." (Greene Cert. ¶9, 16, 17). At that time, Greene and SOMEU would "waive all representational rights." (Greene Cert. ¶9). Greene



would then revert to his former position as chief steward.  
(Greene Cert. ¶9).

Greene certifies that no labor organization opposes the request to amend SOMEU's certification; that no "struggle is ensuing" between organizations over which will represent the unit employees; that SOMEU is "the only other union involved" and fully supports and does not oppose "affiliation" with Local 125; that SOMEU does not oppose the amendment to its certification; and that SOMEU is prepared to "waive further representational interests." (Greene Cert. ¶9, 10).

On April 3, 2019, the Commission staff sent a letter to Union Counsel, explaining in detail that it still appeared that the circumstances amounted to a question concerning representation for which an amendment of certification was improper. The letter highlighted, among other things, that an amendment of certification is intended to record a change in the name or affiliation of the certified representative that has already occurred, not to record a change in the representative itself nor to approve a yet to occur change in the name or affiliation.

The petitioning organization, Local 125, was provided opportunity to withdraw its petition seeking to amend SOMEU's certification, or to advise that it wished to have processing continue, subject to further administrative investigation.

On April 4, 2019,<sup>5/</sup> Union Counsel wrote that "both the SOMEU and IBT Local 125" complied with all the requirements of N.J.A.C. 19:11-1.6 and Cumberland Cty., and that they remain interested in having "IBT 125 recognized as the majority representative of the South Orange negotiations unit." Counsel also wrote that, ". . . the entire slate of officers, of which Mr. Greene is both the leader and the President, have remained in place and will remain in place, but only until PERC recognizes the affiliation."

On April 18, 2019, we requested from the Township its written position on whether it objects to the proposed amendment of certification. A letter was also sent to the current certified exclusive representative, SOMEU, (via Oxfeld), asking whether it wished to intervene or object to the processing of the petition filed by Local 125. On April 18, 2019, Counsel wrote that SOMEU did not wish to intervene and that it supported and endorsed Local 125's petition seeking to amend SOMEU's certification. On April 19, 2019, the Township advised by letter that it did not object to the proposed amendment.

On May 10, 2019, the assigned Commission staff agent sent written questions and requests for information to Local 125, (via Oxfeld), seeking documents and certified answers from a person with knowledge and an optional position statement specifically

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<sup>5/</sup> The letter was received by the agency on April 12, 2019.

addressing the issue of "continuity of representation"<sup>6/7/</sup> by May 22, 2019. Uncertified responses by Oxfeld were received on May 22, 2019, together with copies of the bylaws of Local 125 and the bylaws of SOMEU.

The responses provide the following facts. The officers of SOMEU are President Ken Greene, who has "full autonomy," and Vice President Megan Novak and Treasurer Susan Better, who report to Greene. The officers of Local 125 are President Tony Petillo, who has "full autonomy," and Vice President Dave Baumann, Secretary/Treasurer Ben Hernandez, Recording Secretary Paxton Ryan, Trustee Wayne Homer, Trustee Frank Delacata, and Trustee Vincent Davis, who report to Petillo.

SOMEU has 44 members, all of whom, including its officers, are employed by the Township and comprise the entire negotiations unit.

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6/ The terms "continuity of representation" and "continuity of representative," as used in the various cases cited in this decision, are interchangeable. The focus is on whether an organization is essentially the same representative that was previously certified, or whether a question concerning representation has arisen.

7/ The questions and requests were based on the factors cited as relevant to determining whether there is continuity of representation in the following cases: Western Commercial Transport, Inc., 288 NLRB No. 27, 127 LRRM 1313 (1988), Raymond F. Kravis Ctr. For the Performing Arts, 351 NLRB 143, 182 LRRM 1491, 351 NLRB No. 19 (2007), Sullivan Bros. Printers v. NLRB, 99 F.3rd 1217 (1<sup>st</sup> Cir. 1996), and County of Siskiyou (2010) Cal. PERB Decision No. 2113M.

Local 125 has about 3,500 members in both the public and private sectors.

The initial bylaws of SOMEU provide that current officers maintain their offices until July 1, 2019. To serve, officers must be employed by the Township within the negotiations unit represented by SOMEU. Officers are elected by a plurality of the valid votes cast by members in good standing. Officers are recalled upon a petition of 15% of the membership and a majority of the votes cast for recall in the election conducted within 60 days of the recall petition.

The SOMEU negotiations committee consists of the Executive Board, the SOMEU attorney, and no more than two other committee members elected by the general membership. SOMEU contracts are ratified by the general membership voting by secret ballot.

Local 125 elects officers on a union-wide basis. The bylaws provide that candidates for officer positions must be members in continuous good standing for 24 consecutive months and are elected by a plurality of the votes cast by members in good standing.

Each negotiations unit of Local 125 elects its own negotiating committee that holds meetings with its respective membership to formulate contract proposals and determine which of them become part of the list of demands of Local 125. An elected officer of Local 125, often the President, Vice President, or

Secretary/Treasurer, is the lead negotiator. The chief shop steward of each facility or location is a co-leader in negotiations, and the negotiating committee members of a unit are present at each negotiations session for that unit. It is represented that only members in the negotiations unit that are covered by the negotiated collective negotiations agreement vote on ratification of the agreement. Although the Executive Board of Local 125 does not have authority to ratify contracts, the bylaws allow it to determine the eligible groups to attend meetings where negotiations demands are decided and the groups that are eligible to vote on contract ratification. The bylaws also provide that if the General Executive Board of the International directs Local 125 to refrain from executing an agreement, no agreement shall be considered ratified unless it is specifically approved by the General Executive Board.

Amendments to the bylaws of SOMEU can be originated by a majority of the Executive Board or 15% of the membership and passed by a majority vote of the general membership.

Amendments to the bylaws of Local 125 can be proposed by any 7 members in good standing or by resolution of the Executive Board of Local 125 and are passed at a meeting by a majority vote of all members in Local 125 in good standing voting at the meeting. Amendments are subject to the approval of the General

President as provided in the International Constitution and are not effective until such approval is given.

Local 125 representatives from a negotiations unit file and process grievances with the aid of a designated Business Representative appointed by Local 125. Decisions on which grievances will proceed to arbitration are rendered by the Executive Board of Local 125 and are final. No procedure exists for a review of Local 125 Executive Board decisions.

Local 125 membership dues are determined by the International. The dues structure of former SOMEU members will not change until the Township and Local 125 ratify a collective negotiations agreement covering the negotiations unit. Afterwards, members shall pay incremental increases until the amount established by the International is reached. No former SOMEU member will have to pay initiation or transfer fees to become Local 125 members.

When SOMEU members become members of Local 125, they will decide each negotiations demand for their unit, vote on shop stewards and the Chief Shop Steward, and, as with any member of Local 125, present questions to the Executive Board at monthly meetings. Former SOMEU members will comprise about 1.2% of the overall Local 125 membership. Greene, the current President of SOMEU, will become the Chief Shop Steward "upon the recognition of Local 125 as the majority representative." The other members

of the SOMEU Executive Board will be members of a Local 125 negotiations committee.

SOMEU will continue to exercise control over its existing assets and resources and intends to distribute its assets to active members on the date of "affiliation" with Local 125.

#### **ANALYSIS**

It is well settled that the Commission may use the experience of the National Labor Relations Board (NLRB) and adjudications under the Federal Labor Management Relations Act. Lullo v. International Assn. of Fire Fighters, 55 N.J. 409 (1970). Adopting earlier NLRB precedent, the Commission has required petitioners seeking to amend certifications to reflect changes in the name or affiliation of the certified representative to demonstrate (1) that adequate due process standards were satisfied and (2) that there is continuity of representation. Parsippany-Troy Hills Tp., D.R. No. 94-5, 19 NJPER 511 (¶24235 1993), req. for rev. den. P.E.R.C. No. 94-119, 20 NJPER 279 (¶25141 1994).

In 1995, in order to streamline processing of amendment of certification cases, the Commission amended N.J.A.C. 19:11-1.6 to require a petition to be supported by an affidavit attesting to

certain facts that commonly evidenced due process and continuity of representative. See 27 N.J.R. 2544(b), 27 N.J.R. 3381(a).<sup>8/</sup>

For example, an affiant's statements regarding prior notice of the election given to members, the secret ballot election itself, and the results showing majority support of the change in name or affiliation, are relevant to due process, while certified statements regarding whether officers have changed are relevant to the continuity of representative factor.

However, mere compliance with the amended N.J.A.C. 19:11-1.6 does not guarantee that the Commission will grant a petitioner an amendment of the certified organization's certification. We have

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<sup>8/</sup> The relevant part of the rule now reads:

N.J.A.C. 19:11-1.6. Petition for amendment of certification

(a) An employee organization may file a petition for amendment of certification issued by the Commission for the purpose of recording a change in the name or in the affiliation of the exclusive representative.

. . . .  
(c) A petition for amendment of certification shall 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 and adequate notice of the election, as evidenced by an attached copy of a notice of election and a statement of the date of the notice and the manner in which it was provided to members;
2. The election was conducted by secret ballot, as evidenced by an attached copy of the ballot, and was held within six months of the filing of the petition;
3. A majority voted in favor of the change in name and affiliation, as evidenced by a document setting forth the results; and
4. The organization's officers and the unit structure remain unchanged.



continued to verify that there has been adequate due process and that there is continuity in the representative before amending certifications or granting an organization's intervention in representation cases on the basis that it is the previously certified organization, albeit with a different name. North Hudson Reg. Fire and Rescue, D.R. No. 2000-13, 26 NJPER 257 (¶31101 2000) (explaining the continuing standard and requirement for adequate due process, including that the affiliation procedures provide for an opportunity for debate among members prior to the vote and that the election is not inaccessible to the membership in timing and location); Middletown Tp. et al. and IEU Loc. 417 and OPEIU Loc. 32, P.E.R.C. No. 2000-47, 26 NJPER 59 (¶31020 2000), aff'd 27 NJPER 194 (¶32065 App. Div. 2001) (explaining the standards for due process and continuity of representative, and affirming the Commission's holding that neither had been met and that intervention should be denied for an organization that had alleged a merger with the originally certified organization).

A petition for an amendment of certification is "for the purpose of recording a change in the name or in the affiliation of the exclusive representative" after the "membership of the certified employee representative voted in favor of the change in name and affiliation." N.J.A.C. 19:11-1.6(a), (c). See also Missouri Beef Packers, Inc., 175 NLRB 1100, 71 LRRM 1177 (1969)

("Amendment of certification, by and large, is intended to permit changes in the name of the representative, not a change in the representative itself."). Where more than an administrative or structural change is contemplated and the continuity of the representative is not assured, but rather, a new organization with its own officers is sought to be substituted, the proposed change raises a question concerning representation that may only be considered upon the timely filing of a representation petition, not by a petition to amend the certification. Gas Serv. Co., 213 NLRB 932, 87 LRRM 1226, 213 NLRB No. 123 (October 8, 1974), cited in Cape May Cty., et al., P.E.R.C. No. 85-80, 11 NJPER 91 at n.4 (¶16039 1985).

In Middletown Tp., the Commission denied the request of OPEIU Local 32 for review of the Director of Representation's decision to deny its request to intervene in various representation petitions filed by IUE Local 417 to represent negotiations units in the Township of Middletown and several other municipalities. The previous certified representative for these units was PESU Local 702. OPEIU Local 32 claimed that it had merged with PESU Local 702 and was thus entitled to intervene as the incumbent representative. The Director relied on private sector cases for determining whether an employee organization that has affiliated or merged with a majority representative should be accorded the same status as the prior majority

representative, entitled to bargain with the employer, and entitled to have a certification amended to reflect the name change. The Director found that OPEIU Local 32 had not provided members with adequate due process and had not shown continuity of representation between itself and PESU Local 702. In its decision, the Commission noted that OPEIU Local 32 was a different and much larger organization, that had it attempted to petition for an amendment of certification it would have been required to show that there was continuity of representation, and that there was no reason for believing that OPEIU Local 32 was "essentially the same representative" as the certified representative and entitled to stand in its shoes. Middletown Tp.<sup>9/</sup> The Commission also cited to Western Commercial Transport, Inc., 288 NLRB 214, 127 LRRM 1313, 288 NLRB No. 27 (1988).

The Appellate Division affirmed and elaborated on the due process and continuity of representative standard, listing factors cited by the First Circuit in Sullivan Bros. Printers v. NLRB, 99 F.3d 1217 (1st Cir. 1996). The Appellate Division also cited NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First), 475 U.S. 192 (1986).

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<sup>9/</sup> The Commission also noted that OPEIU Local 32 had abandoned its AFL-CIO Constitution Article XX "no-raiding" claim which would have required it to prove that it had been the certified majority representative. Middletown Tp.

In Seattle-First, the United States Supreme Court held that the NLRB could not require affiliation votes to be extended to non-member unit employees for an amendment of certification, reasoning that an affiliation does not normally create a new organization and the NLRB had no authority to interfere in the internal affairs of the organization, but noting that if the changes are sufficiently dramatic to alter the organization's identity and raise a question concerning representation, the NLRB could require an election among all unit employees. Compare Parsippany-Troy Hills Tp., D.R. No. 94-5, 19 NJPER 511 (¶24235 1993) ("It is permissible for an employee organization to limit participation in an affiliation vote to members only. Employee organizations are not required to allow non-members to participate in affiliation votes, provided there is a continuity of representation."), req. for rev. den. P.E.R.C. No. 94-119, 20 NJPER 279 (¶25141 1994).

In Western Commercial Transport, the NLRB explained the continuity standard and declined an amendment of certification where the alleged affiliation resulted in too substantial a change. The NLRB reasoned:

The Board's role in affiliation cases is to determine whether the affiliation raises a question concerning representation. The Board's traditional practice in such cases has been to examine whether an affiliation election was conducted with appropriate safeguards and whether there was a substantial change in the identity of the representative entity. See, e.g., Hamilton Tool Co., 190 NLRB 571 (1971); Gulf Oil

Corp., 135 NLRB 184 (1962). Under our traditional test, if either due process or continuity of representative is lacking, the Board refused to grant an amendment of certification, instead leaving the matter for resolution through a Board-conducted election. Concededly, however, the Board has not been fully consistent in the weight it has given to the due process and continuity of representative elements of its analysis. Compare Gulf Oil Corp., above (Board refused to amend certification, notwithstanding majority vote in favor of affiliation, because there was no showing of continuity of representative), with Quemetco, Inc., 226 NLRB 1398 (1976) (Board found affiliation effective on basis of unanimous employee vote, notwithstanding evidence of lack of continuity of representative).

In determining whether a "question concerning representation" exists because of lack of continuity, the Board is not directly inquiring into whether there is majority support for the labor organization after the changes at issue, but rather is seeking to determine whether the changes are so great that a new organization has come into being --- one that should be required to establish its status as a bargaining representative through the same means that any labor organization is required to use in the first instance. The continuity requirement thus ensures that no one can substitute an entirely different representative in disregard of the established mechanisms for making such a change. . . . Factors mentioned in decisions dealing with the question of continuity of representative have included the following: continued leadership responsibilities by the existing union officials; the perpetuation of membership rights and duties, such as eligibility for membership, qualification to hold office, oversight of executive council activity, the dues/fees structure, authority to change provisions in the governing documents, the frequency of membership meetings, the continuation of the manner in which contract negotiations, administration, and grievance processing are effectuated; and the preservation of the certified union's physical facilities, books, and assets.

Thus, once a question concerning representation is raised as a result of dramatic changes in the bargaining representative, an affiliation vote cannot be used as a substitute for a representation proceeding before the Board to bring in a totally new bargain representative. The [Supreme Court in Seattle-First] noted that not every affiliation creates a new organization nor results in the dissolution of an existing organization and that many purely internal organizational and structural changes may operate to alter a union's identity, such as changes in the constitution or bylaws, reorganization of financial obligations, etc.

However, "[i]f these changes are sufficiently dramatic to alter the union's identity, affiliation may raise a question of representation, and the Board may then conduct a representation election. Otherwise, the statute gives the Board no authority to interfere in the union's affairs."

[Western Commercial Transport, Inc., 288 N.L.R.B. at 217-18 (emphasis supplied)]

In clarifying "the nature of the inquiry into the continuity of representative in affiliation cases", the NLRB also noted:

"[W]e overrule Quemetco, Inc., [226 NLRB 1398 (1976)], to the extent that it holds that an amendment of certification may be granted notwithstanding evidence showing the absence of continuity of representative. That decision is inconsistent with the weight of Board precedent in this area."

[288 N.L.R.B. at 218 n.13]

In Raymond F. Kravis Ctr. for the Performing Arts, 351 NLRB 143 (2007), the NLRB held that the reasoning in the Supreme Court's Seattle First decision meant that the due process prong in its amendment of certification cases was no longer valid, only

the continuity of representation prong. In evaluating whether continuity of representation was present, the NLRB evaluated various factors, including: whether, upon the alleged merger, the members had to pay initiation or transfer fees; whether any changes in dues merely reflected changes in the level of service; and whether the same officers and agents continued to serve in similar roles.

In Sullivan Bros. Printers, cited by the Appellate Division in Middletown Tp., the First Circuit used a totality of the situation standard for the continuity prong and examined the extent of changes after an administrative transfer between union locals, including changes in: the numbers of members; the makeup of members with respect to who employed them; the persons holding officer positions;<sup>10/</sup> the use of full-time professional business agents; the level of autonomy and voting strength; the procedures for elections; the procedures for contract proposals, negotiation, and ratification, including whether the executive board can override a ratification vote; the makeup of the negotiations teams and whether joint negotiations can be imposed over the desires of different units; the procedures for amendment

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<sup>10/</sup> The First Circuit explained that turnover and lack of continuity of leadership did not end its totality of the evidence analysis for continuity of representation when leadership positions were offered to and declined by the former officers and when the replacement of officers was not a condition of affiliation. See Sullivan Bros. Printers, 99 F.3d at 1224.

of bylaws, the assessment and expenditure of dues; the control of existing assets and records; and the responsibility for existing debts.

In this case, Local 125 and SOMEU exist as separate organizations and have consistently presented themselves as such. Thus, Local 125 is not asking the Commission to amend a certification to merely reflect a name change of one and the same organization. It is averred that the officers of SOMEU will continue to serve as officers of the clerical and blue collar employee negotiations unit only until the Commission recognizes the "affiliation" and Local 125 takes "full control of this unit." The names of Local 125's current officers, which are not the same as SOMEU's current officers, have been provided. I infer that the identified Local 125 officers will continue to serve in such roles within Local 125 if the Commission were to grant the requested amendment, albeit with the added representational responsibilities (currently exercised by SOMEU's officers) for the subject negotiations unit. This suggests that any "affiliation" has not yet occurred and that the petition is premature, as we would only amend a certification to reflect a change in affiliation that has already occurred. It also means that the change in officers would be a direct result of the affiliation vote, which makes sense, because Local 125, as a separately existing organization, already has its own officers.



It is also apparent that the petitioner's use of the word "affiliation" refers to the organization with which individual employees have chosen to affiliate rather than (as used in amendment of certification cases) the organization with which the existing certified organization, as an entity, is choosing to affiliate. Local 125 does not seek an acknowledgment that it is simply SOMEU with a new affiliated parent organization. Instead, Local 125 presents itself as a separate organization and seeks the Commission's formal acknowledgment that it has obtained the support of a majority of SOMEU members. It requests that we amend SOMEU's certification to add its own name on the basis that its organization, rather than SOMEU's, has majority support.

These circumstances demonstrate that Local 125 is raising a question concerning representation. We have never verified, through a card check or secret ballot election, that the majority of unit employees (not just organization members) wish to be represented for collective negotiations by the organization, "Teamsters Local 125", which is acknowledged to be a separate organization from SOMEU, for which we have verified majority support. If SOMEU had simply changed its name, we could find that it is the same organization for which we have verified majority support and amend its certification to reflect that administrative change. However, we cannot amend one organization's certification to name an entirely different

organization. Rather, the new organization must seek either voluntary recognition from the employer or a new certification through card check or an election. Accordingly, the amendment of certification petition of Local 125, a different organization from the certified organization, must be dismissed.

Given the fact that Local 125 and SOMEU have openly presented themselves as separately existing organizations, I do not need to consider the various factors relevant to a continuity of representation analysis. However, for illustrative purposes, I will briefly address the major factors in this case that show that there is no continuity of representation between SOMEU and Local 125.

SOMEU has 44 members who are all employed by the Township and who comprise all of the employees in the negotiations unit. SOMEU bylaws require its officers to be unit employees of the Township. By contrast, Local 125 is significantly larger, with 3,500 members who are employees of various employers in both the public and private sectors. Former SOMEU members will constitute only about 1.2% of the overall Local 125 membership.

As already explained, the officers will change as a direct result of the "affiliation" vote, rather than through normal turnover and similar officer election procedures. The 44 members of SOMEU will have significantly reduced influence in selecting and recalling equivalent officers for Local 125, who are elected

on a union-wide basis. Candidates for Local 125 officer positions must be members in continuous good standing for 24 consecutive months, a limitation not present for SOMEU.

Also, while Local 125 has advised that members of individual negotiations units elect their own negotiating committees and alone vote on their respective contracts or collective negotiations agreements, this proves to be a matter of discretion. The bylaws provided by Local 125 give its Executive Board the power to determine whether ratification votes are limited to members of the negotiations unit, and the General Executive Board has the power to require its approval for ratification. The Local 125 Executive Board decides which matters should proceed to arbitration. Amendments to the bylaws of Local 125 and changes to the amount of dues require approval from the International. These changes would significantly affect the autonomy that SOMEU members have previously exercised for themselves.

Additionally, SOMEU will continue to exist after these changes take place and will continue to exercise control over its existing assets and resources.

Under the totality of these facts, even if Local 125 had claimed that it was the same organization as SOMEU (albeit with a different name or affiliation relationship), I would find a lack

of continuity of representation and would dismiss the petition to amend the certification.

Local 125 argues that the certification should be amended because it has fully complied with the standards articulated in Cumberland Cty. Bd. of Social Services, D.R. No. 2006-10, 32 NJPER 33 (¶16 2006). To the extent that Local 125 argues that this case stands for the proposition that an amendment of certification should always issue (even when there is no continuity of representation) if the petitioner has complied with N.J.A.C. 19:11-1.6, provided due process to members of the certified organization, and not been opposed by the employer or any organization that is part of the certified organization, I disagree.

In Cumberland Cty., the petitioner was the same local body of the organization that was certified as the majority representative. The petitioner, by filing its petition, requested that the Commission acknowledge its disaffiliation from the affiliated parent organization, which did not oppose the petition. The petitioner affirmed that its officers had not changed as a result of the disaffiliation. Continuity of representation was considered, and, as explained above, remains a factor that must be satisfied regardless of a petitioner's mere compliance with our regulations and whether due process was afforded.

Cumberland Cty. does not contemplate or affirm that an entirely different organization may replace the local organization. As noted in Cumberland Cty. at footnote 2, an amendment of certification may not be granted where there is a question concerning representation. While the opposition of the certified representative is sufficient to raise a question concerning representation, it is not the only situation in which a question concerning representation arises. It may also arise when we are presented facts showing that the petitioner is not substantially the same organization that we originally certified.

The intentions of SOMEU and Local 125 are similar to those of the organizations involved in Gas Serv. Co. There, Local 1613 obtained a certification through a contested election, but it soon became clear that its business agent was unable to sufficiently handle the workload involved for the particular unit. Local 53, affiliated with the same international organization as Local 1613, offered the services of its more experienced assistant business agent. Local 1613 conducted its own election among the employees, who voted in favor of Local 53. The two locals then filed a joint petition within less than one year of Local 1613's certification seeking to amend the certification to substitute the name of Local 53 for Local 1613 as the representative on the certification. Although the employer opposed, all of the organizations involved were in

agreement with each other. The NLRB found that the proposed change was not simply administrative or structural, was not designed to assure continuity of representation, would result in the substitution of a new and different union as the representative, would leave Local 1613 existing as a viable organization, and would raise a question concerning representation. Accordingly, the petition to amend the certification was dismissed.

Here, SOMEU was certified less than one year ago in a contested election. Its president, Greene, certified that he realized almost immediately that he "had bitten off more than [he] could chew." The issues considered significant by Greene included receiving dues and negotiating a full contract. Greene met with officers of Local 125 and all agreed to "affiliation". SOMEU members voted for Local 125. Although the petitioner here is Local 125, Greene has provided an affidavit and a certification and has been copied along with the president of Local 125 on correspondence sent by Counsel for Local 125. This petition may appropriately be regarded a "joint venture" by Local 125 and SOMEU. The changes proposed by the organizations are not simply administrative or structural, are not designed to assure continuity of representation, would result in the substitution of a new and different union as the representative, would leave SOMEU existing as a viable organization, and raise a

question concerning representation. Accordingly, the instant petition must also be dismissed.

In Cape May Assignment Judge, et al., P.E.R.C. No. 85-80, 11 NJPER 91 (¶16039 1985), the petitioning local organization filed multiple petitions to amend its various certifications covering multiple negotiations units of employees of different employers. The petitioner sought to have the certifications amended to reflect its disaffiliation from the international organization that was listed on the certifications. Although the international organization objected, none of the public employers opposed the petitions. The Commission dismissed the petition, relying on Missouri Beef Packers, Inc., 175 NLRB 1100, 71 LRRM 1177, 175 NLRB No. 179 (May 19, 1969), providing that an amendment of certification is intended to permit a change in the name of the representative itself, but where there is no guarantee of continuity of representation and the opposing certified organization is a functioning, viable entity, an amendment would circumvent the requirement that employees select their own representative.

It did not matter that none of the organizations involved in Gas Serv. Co. objected or that none of the employers involved in Cape May Assignment Judge objected. In this case, I do not find it significant that neither the organizations involved nor the employer involved have objected. What matters is whether there

is continuity in the representative, which the Commission is independently responsible for determining before granting an amendment to a certification, where the certification is supposed to represent that the named organization is supported by the majority of employees in negotiations unit.

Parties may seek a voluntary recognition agreement without this agency's involvement, but we do not issue certifications merely upon the agreement of the parties. Before issuing certifications, we confirm through a card check or an election that an organization represents a majority of employees in a unit that we independently determine to be an appropriate unit. We will not issue a certification for an inappropriate negotiations unit, regardless of whether the parties consent. In such a case, the employer may, without the Commission's involvement, voluntarily agree to recognize a union as the majority representative for a unit that the parties define through agreement. Sometimes, when seeking a Commission certification of representative, the parties may agree to the Commission's preferred unit description and enter a side agreement without the Commission's involvement.

These are examples of our duty under N.J.A.C. 19:11-2.2 to conduct an administrative investigation of petitions to determine the facts and whether or not a valid question concerning representation in an appropriate unit exists. This duty extends



to our processing of amendment of certification petitions. In this matter, we were ultimately presented with information that confirmed that a question concerning representation exists. Regardless of whether any party opposes this petition, we cannot issue or amend a certification in the face of this question without independently verifying majority support, pursuant to a properly filed and timely representation petition. Cf. Gulf Oil Corp., 109 NLRB 861, 34 LRRM 1455, 109 NLRB No. 127 (August 17, 1954) (explaining that amending a certification when a question concerning representation was raised under the facts of that case would in effect certify a union that had been rejected by employees less than a year before; the fact that petitioner could not file for an election due to the one year election bar was not sufficient justification for abandonment of that procedure).

There are important policy reasons for requiring continuity of representation regardless of opposition to an amendment of certification petition. Once an employer voluntarily recognizes an organization or once one is certified, the employer has a continuing negotiations obligation to negotiate absent a good faith doubt as to its majority status. See N.J.A.C. 19:11-1.1(a)(2), -1.4(a); Hillside Tp., I.R. No. 2019-14, 45 NJPER 260 (¶70 2019). If the certified representative changes its name or affiliation but remains essentially the same organization, the employer's and representative's negotiations and contractual

obligations would continue, and the petitioner would be entitled to assert any remaining time left under a contract bar or certification bar (an amendment is not a new certification with a new one-year certification bar). If an entirely different organization claims to represent the employees, the employer may have a good faith doubt as to that organization's majority status that in turn may effect the employer's negotiations and contractual obligations.

If the petitioner really is the same organization, the Commission does not wish to interfere with the otherwise purely "internal affairs" of the organization when it seeks to go by a different name or to make affiliation arrangements with other organizations while retaining sufficient autonomy. A petitioner that demonstrates the continuity between the certified organization and itself is entitled to retain the benefits and corresponding obligations with which certification entails. Even without an amendment of certification, the employer would still be obligated to negotiate with the organization, and the organization could still intervene in representation matters on the basis of its incumbency and could still raise the original certification as a basis to block other petitions filed within a year of the certification. The organization, however, would likely be required to demonstrate continuity in the applicable unfair practice or representation case. See Middletown Tp.

In an amendment of certification case, however, no notices are posted or sent. That is because the Commission is merely determining whether the petitioner is the same organization that was previously certified. If it is the same organization, then other interested organizations would already have been given prior notice during the original representation case that led to certification. The certified organization, under a new name, is thus still entitled to the remaining time of its certification bar and does not lose this right merely because it has changed its name or affiliation relationship but otherwise remained sufficiently autonomous.

If the petitioner is not the same organization that was certified, it would be improper for the Commission to give the petitioner status as the certified organization, requiring the employer to negotiate with it and preventing other organizations from filing representation petitions during the remaining certification bar period. Not only would it be unfair to the employer and other organizations, but it would be unfair to non-member unit employees who have in actuality had their representative switched without a vote, as opposed to having the representative previously chosen by the majority of unit employees simply changing its name or affiliations through internal organizational procedures whose control may be rightly limited to organizational members.

For the reason that no continuity of representation has been demonstrated between the petitioner, Local 125, and the certified organization, SOMEU, the petition to amend the certification of SOMEU is dismissed.<sup>11/12/</sup>

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11/ We received a copy of correspondence from Local 125 to SOMEU suggesting that Local 125 may have been recognized by the Township as the majority representative for upcoming negotiations. Provided that SOMEU disclaimed interest, Local 125 may now be the majority representative, but without a certification or recognition bar. See Footnote 1. If recognition has not occurred, SOMEU remains the certified representative.

12/ I find that the "affiliation" vote satisfied the Commission's previous standards for adequate due process. Because of this finding, and because the petition is dismissed for lack of continuity of representation, I need not determine whether the Commission's due process requirement for amendment of certification petitions exceeds its authority under the Act. See Seattle-First and Raymond Cravis Ctr.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

/s/Jonathan Roth  
Jonathan Roth  
Director of Representation

DATED: July 26, 2019  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by August 5, 2019