

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WASHINGTON TOWNSHIP  
FIRE DISTRICT #1,

Public Employer,

-and-

Docket No. RO-2003-15

IAFF LOCAL 4204-B,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of Washington Township Fire District #1 for review of D.R. No. 2003-16. In that decision, the Director of Representation directed that an election be conducted among regularly employed superior fire officers including all captains. A representation petition had been filed by IAFF Local 4204-B to represent three full-time fire captains. The District refused to consent to an election, arguing that the captains are managerial executives ineligible to be members of any collective negotiations unit, and that this IAFF local cannot represent superior officers since the same organization also represents rank-and-file firefighters. The Chair denied the District's request for a stay of the election and on April 17 an election was conducted and a majority of the employees selected the IAFF to be their majority representative. The Commission finds that there are no compelling reasons to review the Director's determinations. Any conflict of interest issues that might arise post-certification can be addressed through the Commission's unfair practice jurisdiction.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2003-84

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Appearances:

For the Public Employer, Littler Mendelson, attorneys  
(Ronald I. Tisch, of counsel)

For the Petitioner, Keith Kemery, Business Agent

DECISION

On April 10, 2003, Washington Township Fire District #1 requested review of D.R. No. 2003-16, 29 NJPER \_\_\_\_ (¶\_\_\_\_ 2003). In that decision, the Director of Representation directed that an election be conducted among regularly employed superior fire officers including all captains.

A representation petition had been filed by IAFF Local 4204-B to represent three full-time fire captains. The District refused to consent to an election, arguing that the captains are managerial executives ineligible to be members of any collective negotiations unit, and that this IAFF local cannot represent superior officers since the same organization also represents rank-and-file firefighters.

On April 15, 2003, the Commission Chair denied the District's request for a stay pending review. On April 17, an election was conducted and a majority of employees selected the petitioner to be their majority representative. On April 28, a Certification of Representative issued.<sup>1/</sup>

Review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

The District argues that the proposed employee unit constitutes an unlawful organization structure.<sup>2/</sup>

N.J.S.A. 34:13A-5.3 provides that, except for unusual circumstances not relevant here, supervisors are prohibited from

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1/ We deny the employer's request for oral argument.

2/ The District has withdrawn an argument that review should be granted because the three captains are managerial executives.

representation by an organization with non-supervisory employees as members. In City of Camden, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), we recognized the need for safeguards against the possibility that a rank-and-file police organization could interfere with or dominate the organization or negotiations of a superior officers organization affiliated with the same parent organization. Accordingly, we created a procedure for an organization seeking to represent supervisory employees. The organization must certify that it has a statutorily valid structure and it must agree to certain specific provisions as a condition of certification. The policy has been applied consistently in cases where this issue has arisen and has been approved by the courts. See, e.g., Hudson Cty., D.R. No. 85-7, 10 NJPER 623 (¶15297 1984), aff'd NJPER Supp.2d 157 (¶138 App. Div. 1985).

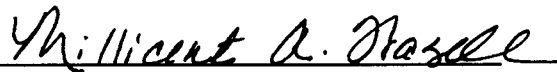
On October 16, 2002, the petitioner submitted a certification stating that if elected, it would comply with the Camden requirements. The Director noted the submission in his decision and appropriately declined to speculate about the petitioner's future conduct. There are no compelling reasons to review his determinations. We specifically decline the District's invitation to modify a policy that has worked well for over twenty years. Any conflict of interest issues that might arise post-certification can be addressed at that time through

our unfair practice jurisdiction. To address them now would be premature. Hudson Cty., NJPER Supp.2d at 158.

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: May 29, 2003  
Trenton, New Jersey  
ISSUED: May 30, 2003