

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SEER OPINION 92-007

In the Matter of

Ohio Civil Service Employees Association
Local 11, AFSCME, AFL-CIO,

Employee Organization,

and

Office of Collective Bargaining,

Employer.

CASE NUMBER: 90-REP-12-0308

DIRECTIVE GRANTING PETITION FOR AMENDMENT
OF CERTIFICATION
(Opinion Attached)

Before Chairman Owens, Vice Chairman Pottenger and Board Member Sheehan: March 19, 1992.

On December 12, 1990, the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO (Employee Organization) filed a Petition for Amendment of Certification seeking to add the classification Firefighter in the Adjutant General's Office to its existing bargaining unit. On April 5, 1991, the Employee Organization amended its petition to include the classification of Lieutenant Firefighter. The Office of Collective Bargaining filed objections and the case was directed to hearing.

The Board has reviewed the record and the Hearing Officer's Recommended Determination. No Exceptions were filed.

For the reasons stated in the attached Opinion incorporated by reference, the Board adopts the Stipulations, Conclusions of Law and Recommendations 1 and 2.

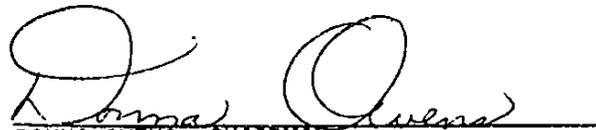
The classifications of Firefighter and Lieutenant Firefighter are hereby accreted to State Bargaining Unit 7.

The Petition for Amendment of Certification is granted and State Bargaining Unit 7 is certified as amended.

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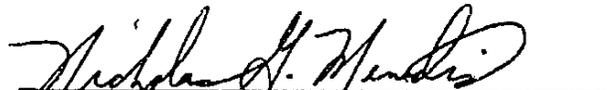
It is so directed.

OWENS, Chairman, POTTENGER, Vice Chairman, and SHEEHAN, Board Member,
concur.


DONNA OWENS, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 119.12, by filing a notice of appeal with the Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the Franklin County Common Pleas Court within fifteen days after the mailing of the Board's directive.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 10th day of June, 1992.


NICHOLAS G. MENEDIS, EXECUTIVE DIRECTOR

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CASE NUMBER: 90-REP-12-0308

OPINION

SHEEHAN, Board Member:

This case comes before us on a Petition for Amendment of Certification in which the Employee Organization seeks to add two State of Ohio classifications, Firefighter (Classification No. 26591) and Lieutenant Firefighter (Classification No. 26592) to State Bargaining Unit 7. The thirty-four (34) Firefighters and sixteen (16) Lieutenant Firefighters involved are located in the State of Ohio, Office of the Adjutant General.

These two classifications were created in 1989 by the Ohio Department of Administrative Services, and their specifications were approved by the Joint Committee on Agency Rule Review in October, 1989 pursuant to Ohio Revised Code (O.R.C.) Chapter 119. (Stipulations 1, 2, 3 & 6).

According to the minimum qualifications for these positions, all Firefighters and Lieutenant Firefighters must be members of the "organized militia." (Stipulations 5 & 23). Firefighters must use military leave provisions of the Revised Code and Ohio Administrative Code in order to take leave for military active duty. (Stipulation 25). All persons currently holding Firefighter and Lieutenant Firefighter classifications are members

of the Ohio Air National Guard, Ohio Army National Guard, Ohio Naval Militia, or the Ohio Military Reserve. (Stipulation 10).

The total number of employees in State Bargaining Unit 7 is 2,747 as of October 25, 1991. (Stipulation 37).

The classifications at issue are subject to many policies and procedures developed and utilized by the Department of Administrative Services, and are subject to the same personnel policies and procedures as are other Adjutant General employees except for daily work rules and procedures tailored to the unique nature of the firefighter classifications. (Stipulations 15, 16, 17, 18 & 20).

I.

We agree with the hearing officer that the classifications of Firefighter and Lieutenant Firefighter¹ should be accreted into State Bargaining Unit 7. However, some clarification of the standard for accreting of public employees into state units, is warranted. In In re Columbus Board of Education, SERB 86-051(12-11-86) the Board listed the following eight factors to be considered in determining whether accretion is appropriate: The amount of movement of employees between the unrepresented group and the present group; integration of operations; the degree of central administrative control over the groups; the similarity of the

¹ The Board agrees with the hearing officer that members of the organized militia, including firefighters and lieutenant firefighters at issue here, are public employees pursuant to O.R.C. §4117.01(C) except during those periods when they are on active duty status. We hereby adopt the hearing officer's analysis and discussion of this issue which appears on pages 9 through 15 of the Hearing Officer's Proposed Order.

groups' skills, work and working conditions; the degree of common control over labor relations; the groups' collective bargaining histories; and the number of employees in each group.

The hearing officer found that there is little, if any, interchange between the firefighters and lieutenant firefighters and the employees in Bargaining Unit 7. The firefighters and lieutenant firefighters' primary work locations are the five station houses at each of three Air National Guard bases in Springfield, Mansfield and Toledo, while the employees in Unit 7 are located throughout the state. The hearing officer also found some similarity in skills and work between the classifications at issue and the employees in Unit 7. There is a certain degree of central administrative control and common control over labor relations, and the classifications are subject to many policies and procedures developed and utilized by the Department of Administrative Services.

In fact, only three of the eight Columbus Board of Education factors are present. Nevertheless, for the reasons stated below we agree that accretion is appropriate here.

II.

The Board has never taken the position that these eight factors are the only ones to be considered when accretion is sought, nor that each and every factor must be present in order for accretion to be appropriate. Clearly the factors listed in Columbus simply mirror the traditional guidelines which the NLRB applies to determine community of interest for purposes of accretion under its accretion policy. As we pointed out in Kent State University, SERB 92-002, the narrower accretion policy of the NLRB does

not meet the needs of the public sector where more flexible accretion is crucial.²

Thus, in accordance with our policy in Kent State University, where an accretion question comes before the Board on an Amendment of Certification Petition, the Board will make a determination according to O.R.C. §4117.06(B) as to whether the existing bargaining unit is an appropriate unit into which to accrete the classifications at issue. O.R.C. §4117.06(B) mandates consideration of the following factors: the desires of the employees; the community of interest; wages, hours, and other working conditions of the public employees; the effect of over-fragmentation; the efficiency of operations of the public employer; the administrative structure of the public employer; and the history of collective bargaining.

Pursuant to O.R.C. §4117.06(B), community of interest is only one factor to be considered, and not necessarily the most important one. Hence, even where many of the traditional factors supporting community of interest are not present, the Board might still find accretion is justified, depending upon the weight given remaining factors, such as the employer's efficiency of operations and the effect of over-fragmentation.

Where a state unit is involved, particular weight will be attached to the factor of over-fragmentation, above and beyond that given to the community of interest factor.

² Ohio Administrative Code (O.A.C.) Rule 4117-5-01(G) states: When a petition to amend certification seeks the addition of a group of employees to the existing unit, such addition may be permitted only if the number of employees to be added is substantially smaller than the number of employees in the existing unit.

III.

The case at issue involves accretion into a state bargaining unit. The examination of the factors in O.R.C. §4117.06(B) shows that while the community of interest is relatively weak, the over-fragmentation factor weighs heavily where the accretion is into a state bargaining unit.

We also note that the number of employees to be added is substantially smaller than the number of employees in State Unit 7 and thus the ratio constraint of O.A.C. Rule 4117-5-01(G) is met.

Accordingly, we find that accretion of the classifications of Firefighters and Lieutenant Firefighters to State Bargaining Unit 7 is appropriate.

Owens, Chairman, and Pottenger, Vice Chairman, concur.