

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

SERB OPINION 92-013

In the Matter of

Cuyahoga Deputy Sheriff's Union Local I,
Employee Organization

and

Cleveland Police Patrolman's Association,
Employee Organization,

and

Cuyahoga County Sheriff's Department,
Employer.

CASE NUMBER: 92-REP-05-0105

OPINION

OWENS, Chairman:

On September 15, 1989, the Board issued a directive certifying CPAA as the exclusive representative of all sworn deputy sheriffs employed by the Cuyahoga County Sheriff's Department (hereafter Employer).

Thereafter, according to undisputed evidence submitted by counsel for Local I, the Local alone represented the bargaining unit in every aspect of labor-management activities from negotiations through arbitration. Because Local I retained autonomy in all matters relating to collective bargaining, the Local, along with CPAA and the Employer, jointly filed this petition for Amendment of Certification seeking to disaffiliate Local I from CPAA.

In support of its petition, Local I filed a brief indicating that the jointly filed petition was the result of a secret ballot election held on May 1, 1992. 101 of approximately 137 bargaining unit employees voted in the election, 90 of whom voted to disaffiliate from CPAA.

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Local I asserts that the instant petition represents a "mirror image" of the situation presented in In re Montgomery County Joint Vocational School Dist Bd of Ed. SERB 89-010 (5-11-89) where the Board set forth criteria for recognizing an initial affiliation through a Petition for Amendment of Certification. Local I notes that all the standards set forth in Montgomery have been met, and the only differences between Montgomery and the instant case are: (1) the petition is jointly filed by all parties and (2) the result would be a disaffiliation rather than an affiliation.

In Montgomery the Board provided that a previously unaffiliated employee organization could obtain an amendment of certification reflecting an affiliation if:

1. The employee organization verifies in the course of the investigation pursuant to O.A.C. Rule 4117-5-04 that adequate internal affiliation election procedures were followed. Such procedures should provide that:
 - a. Union members are given reasonable notice of the upcoming vote on the question of affiliation;
 - b. Union members are given an opportunity to discuss the affiliation election; and
 - c. Steps are taken to protect the secrecy of the ballots used in the affiliation election.
2. There is substantial continuity between the employee organization before and after affiliation, thus eliminating the possibility of a question of representation arising from a change in identity of the union. Determination of this factual question will, of necessity, be made by the Board on a case-by-case basis.
3. Pursuant to O.A.C. Rule 4117-5-01(E), there is no other question of representation pending.

Montgomery, supra at 3-57, 3-58.

We believe that where amendment of certification is prompted by a disaffiliation vote, the same considerations should apply.

Before the Board sanctions either an affiliation or disaffiliation, it must conduct a limited inquiry to establish that unit employees were afforded the opportunity to discuss the issue and to vote by secret ballot. Moreover, the Board must determine if the disaffiliation will result in any substantive changes in the identity of the bargaining representative in order to ensure substantial continuity of representation and protect the rights and duties of the parties under the collective bargaining agreement. The Board must also address any issues regarding questions concerning representation in light of O.A.C. Rule 4117-5-01(E). This rule permits petitions for amendment of certification to be filed only "in the absence of a question of majority representation." The Board must decide whether the disaffiliation would result in a significant change in representation. If so, the Board will call for a new election.

For these reasons, the Board adopts the standards set forth in Montgomery as its standards for ruling on a petition for amendment of certification when an internal union vote has called for disaffiliation.

Based on the evidence, Local I has satisfied the Montgomery requirements. Local I held membership meetings allowing its members the opportunity to discuss disaffiliation issues. Appropriate notices were posted by the union regarding the secret ballot vote on the petition to amend the certification. A secret ballot election was conducted. The results of the ballot overwhelmingly establish the membership's desire to amend its certification and disaffiliate itself from CPAA.

The representation afforded to each of the unit employees will not be affected by the disaffiliation because there is no dispute regarding the

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past operation of Local I. As stated earlier, Local I has continued to represent its bargaining unit in every aspect of labor-management activity during the affiliation period. Local I maintains officers at the local level, and the local constitution and by-laws remain largely intact, with only such amendments as necessary to effectuate the disaffiliation. Therefore, the requirement for substantial continuity is met. Further, there is no other question of representation pending.

For these reasons, Local I will continue to retain its local autonomy in all matters relating to collective bargaining, as desired by its members and exhibited through the secret ballot.

Accordingly, the petition is granted, and the certification is amended to reflect that the exclusive representative is now Cuyahoga Deputy Sheriff's Union, Local I.

Sheehan, Board Member, concurs; Pottenger, Vice Chairman, absent.

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