

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the Matter of

Fraternal Order of Police, George Murray Lodge No. 67,

Employee Organization,

and

City of Maple Heights,

Employer.

CASE NUMBER: 93-REP-02-0035

OPINION

MASON, Board Member:

The City of Maple Heights (Employer) has filed a petition to amend certification by merging a bargaining unit composed of a single Captain into a bargaining unit composed of Sergeants and Lieutenants. The hearing officer found the petition to be appropriate. We do not agree. The Board takes administrative notice of two directives issued by the State Employment Relations Board in the matter of Fraternal Order of Police, George Murray Lodge No. 67 and Northern Ohio Patrolmen's Benevolent Association and City of Maple Heights. One, Direction of Election Pursuant to Consent Election Agreement, was issued on August 15, 1986. The second, Certification of Election Results and of Exclusive Representative, was issued on October 16, 1986. These two documents clearly show that the existing unit of Sergeants and above was certified pursuant to a consent election agreement signed by both parties in our case, which specifically excluded Captains.¹

¹The bargaining unit certified pursuant to a consent election agreement is:

Included: All full-time police officers and detectives holding the rank of Sergeant and above.

Excluded: Chief of Police, Captains, all ranks below Sergeant, all part-time, seasonal, temporary and probationary employees. All other employees of the Employer.

It should be pointed out that, while Ohio Revised Code § 4117.06(D)(6) prohibits the inclusion of sergeants and above with rank and file members of a police department, there is no prohibition on the inclusion of Captains in a Sergeant and above unit. Thus, had the parties wished they could have included the Captain position in the Sergeants and above unit. The parties clearly did not wish to do so and, on the contrary, negotiated and agreed to exclude the Captain from the Sergeants unit. In 1992 a separate unit was created for the Captain position pursuant to an unopposed Request for Recognition.

Before us now is a petition for amendment of certification filed by the Employer to accrete the Captain into the Sergeants and above unit. The Employee Organization objects. Pursuant to *In re Cincinnati Technical College*, SERB 94-018 (10-17-94), where parties sign a consent election agreement with specific exclusions, the Board will allow a change in the specific terms over the objections of one party only (1) when a substantial change occurred in the factual underpinnings of the parties' agreement after the signing of the agreement or (2) when traditional equity considerations exist which would relieve a party from a contract term, e.g., in situations of fraud and initial mistake of fact.

Applying this standard to the case at hand, the record does not show any change in the factual underpinnings of the parties' agreement to exclude the Captain from the Sergeants and above unit, nor does the record show any fraud or initial mistake of fact. The only occurrence raised by the Employer as a basis for its petition is the Captain's demand to go to conciliation. There is nothing in the record to support a claim that this is a substantial change in the factual underpinnings of the parties' agreement. Hence, under *In re Cincinnati Technical College*, without the agreement of both parties the Board will not allow such a change in the specific terms of the consent election agreement. Thus, since one of the parties, the Employee Organization in this case, objects to the petitioned-for change, the Employer's petition for amendment of certification is denied.

POHLER, Chairman, and POTTENGER, Vice Chairman, concur.