

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Fraternal Order of Police, Ohio Labor Council, Inc.,

Employee Organization,

and

Darke County Sheriff,

Employer.

Case No. 99-REP-06-0150

DIRECTIVE DISMISSING PETITION FOR AMENDMENT OF CERTIFICATION
(OPINION ATTACHED)

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich:
June 22, 2000.

On June 28, 1999, the Fraternal Order of Police, Ohio Labor Council, Inc. ("Employee Organization") filed a Petition for Amendment of Certification seeking to split the existing bargaining unit into four separate bargaining units. On July 14, 1999, the Darke County Sheriff ("Employer") filed its "Employer's Position Statement" objecting to the petition. On December 9, 1999, the State Employment Relations Board ("Board") directed this matter to hearing to determine an appropriate bargaining unit and for all other relevant issues.

The parties agreed to submit the case on stipulations and briefs in lieu of a hearing. On February 3, 2000, the "Stipulations of the Parties" were filed. On February 18, 2000, the parties filed their briefs. On March 23, 2000, the Board transferred the case from the Hearings Section for a decision on the merits. On April 20, 2000, the Board directed the parties' representatives to appear for an oral argument. On May 17, 2000, the parties presented their oral arguments to the Board.

After reviewing the stipulations of fact, the parties' briefs, oral arguments, and all filings, the Board finds, for the reasons set forth in the attached Opinion, incorporated by reference, that the Deputy Sheriffs employed by the Darke County Sheriff are "full-time deputy sheriffs appointed under section 311.04 of the Revised Code" and are "members of a police department" as that term is defined in O.R.C. § 4117.01(N) and that the

Fraternal Order of Police, Ohio Labor Council, Inc. has not satisfied any standard for changing the composition of the existing bargaining unit over the Employer's objections. As a result, the Petition for Amendment of Certification is hereby dismissed.

It is so directed.

POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



SUE POHLER, 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 State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 432154213, and with the Franklin County Court of Common Pleas within fifteen (15) 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 22nd day of June 2000.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY

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OPINION

GILLMOR, Vice Chairman:

This representation case comes before the State Employment Relations Board ("Board") upon the joint stipulations and briefs of the parties and upon the oral arguments presented to the Board by the parties on May 17, 2000. For the reasons below, we find that the employees in the current bargaining unit are all full-time deputy sheriffs appointed pursuant to Ohio Revised Code ("O.R.C.") § 311.04. The unit was certified by the Board on February 18, 1993, following an election held pursuant to a consent election agreement, and includes "[a]ll Deputy Sheriffs appointed pursuant to Section 311.04 of the Revised Code which includes the classification of Correction Officer, Patrol Officer, Dispatcher and Cook." Since the stipulations of fact do not reveal any substantial changes, any disparity in the quality of representation, any history of inadequate representation, any changes in the factual underpinnings of the consent election agreement, or any fraud or initial mistake involving the consent election agreement, the Petition for Amendment of Certification filed by the Fraternal Order of Police, Ohio Labor Council, Inc. must be dismissed.

I. FINDINGS OF FACT

1. The Darke County Sheriff (“Employer”) is a “public employer” as defined by O.R.C. § 4117.01(B). (S. 1)
2. The Fraternal Order of Police, Ohio Labor Council, Inc. (“FOP” or “Petitioner”) is an “employee organization” as defined by O.R.C. § 4117.01 (D). It is the Board-certified representative of a unit of the Employer’s employees. (S. 2 and 3; Joint Exhibit [“Jt. Exh.”] 1)
3. The bargaining unit was first certified by the Board in 1964. (S. 4; Jt. Exh. 3)
4. All of the employees in the bargaining unit are Deputy Sheriffs appointed pursuant to O.R.C. § 311.04, and are all full-time employees of the Employer, although all those employees are not in the classification of Deputy Sheriff. (S. 5)
5. On June 26, 1999, the FOP filed a Petition for Amendment of Certification seeking to split the current bargaining unit into four (4) separate bargaining units. (S. 13; Jt. Exh. 9)
6. On July 14, 1999, the Employer filed an “Employer’s Position Statement” objecting to the petition for amendment of certification referenced in Stipulation 13. (S. 14; Jt. Exh. IO)
7. On December 15, 1999, the Board directed the instant matter to hearing for “determination of an appropriate bargaining unit and for all other relevant issues.” (S. 15; Jt. Exh. II)
8. The parties have stipulated that the sole issue to be determined by the Board is whether all of the employees in the bargaining unit are “members of a police department” as defined by O.R.C. § 4117.01 (N), and whether the bargaining unit is therefore prohibited by O.R.C. § 4117.06(D)(3). (S. 16)
9. The parties have stipulated that there is insufficient evidence to justify the severance of a portion of the bargaining unit in accordance with the requirements established by *In re State of Ohio*, SERB 95-012 (6-30-95). (S. 17)

II. DISCUSSION

The Petitioner contends that the current composition of the bargaining unit is proscribed by O.R.C. § 4117.06(D)(3). O.R.C. § 4117.06(D)(3) states that the Board may not “include members of a police or fire department or members of the state highway patrol in a unit with other classifications of public employees of the department.”

O.R.C. § 4117.01 provides as follows:

(N) “Member of a police department” means a person who is in the employ of a police department of a municipal corporation as a full-time regular police officer as a result of an appointment from a duly established civil service eligibility list or under section 737.15 or section 737.16 of the Revised Code, a full-time deputy sheriff appointed under section 311.04 of the Revised Code, a township constable appointed under section 509.01 of the Revised Code, or a member of a township police district police department appointed under section 505.49 of the Revised Code.

For the employees in the existing bargaining unit to be “members of a police department”, they must be full-time deputy sheriffs appointed under O.R.C. § 311.04. The parties have stipulated that all of the employees in the bargaining unit are deputy sheriffs, are full-time employees, and have been appointed pursuant to O.R.C. § 311.04.’ The Petitioner argues that all of these employees are not deputy sheriffs because they are all not in the *classification* of deputy sheriff. The Petitioner seeks to add a requirement to the definition of “member of a police department” that is not within the statute. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to rules of statutory interpretation. *Sears v. Weimer (1944)*, 143 Ohio St. 312, Syllabus ¶ 5. The Board must apply the plain language of the definition in the statute. As a result, we find that all of the members of the bargaining unit meet the definition for a “member of a police department.” Because *all* of the employees

‘Finding of Fact (“F.F.”) No. 4.

in the current bargaining unit are members of a police department, the unit does not run afoul of O.R.C. § 4117.06(D)(3).²

The Petitioner seeks to split the current bargaining unit into four separate units. The severance standard adopted by the Board in *In re State of Ohio*, SERB 95-012, at p. 3-90 (6-30-95), provides as follows:

Where a petition for election is filed to sever a group of employees from an existing bargaining unit, the Board will allow such severance only if the petitioner proves that:

1. Since the establishment of the existing unit, substantial changes have taken place in the classifications, job duties, working conditions, or other circumstances of the petitioned-for employees making the existing unit inappropriate or unworkable; or

2. Since the establishment of the existing unit, substantial changes in circumstances have taken place showing the existence of a conflict of interest between the petitioned-for employees and other employees in the unit making the existing representation inadequate; or

3. Since the establishment of the existing unit, substantial changes have taken place in the employer's operations or administrative structure making the existing unit inappropriate or unworkable; or

4. The history of collective bargaining in the existing unit shows inadequate representation of the petitioned-for employees and disparity in the quality of representation provided to them as distinguished from that provided to the other employees in the unit.

Under this test, it is the petitioner's burden to prove that one of the four parts of the test have been met. The parties have stipulated that there is insufficient evidence to justify the severance of a portion of the bargaining unit in accordance with the requirements established by *In re State of Ohio*, SERB 95012 (6-30-95).³ Indeed, the stipulations do not reveal any substantial changes that have taken place nor do they reveal a history of

*By reaching this conclusion, the Board does not need to address the Petitioner's request to overturn the holding in *In re Warren County Sheriff*, SERB 85-016 (5-1-85).

³F.F. No. 9.

inadequate representation of the employees or disparity in the quality of representation provided. Consequently, the severance standard has not been met by the Petitioner.

The Employer urges the Board to dismiss the petition as improper under the holding in *In re Cincinnati Technical College*, SERB 94-018 (10-17-94) ("*Cincinnati Tech*"). In *Cincinnati Tech*, the Board addressed the issue of whether and under what circumstances a bargaining unit agreed upon by the parties in a consent election agreement can be altered over the objections of one of the parties. The Board held that it will allow a change in the specific terms of the unit 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 consent election agreement or (2) when traditional equity considerations existed that would relieve a party from a contract term, such as situations of fraud and initial mistake of fact. *Cincinnati Tech*, 1994 SERB 3-I 16.

In 1992, the FOP and the Employer were parties to a consent election agreement that described the current bargaining unit as "all Deputy Sheriffs appointed pursuant to § 311.04 of the Revised Code which includes the classifications of Correction Officer, Patrol Officer, Dispatcher and Cook." The Board certified the FOP as the exclusive representative of this unit. The parties' stipulations revealed that no claim of fraud or initial mistake is involved. Moreover, the parties' stipulations do not reveal that any substantial change has occurred in the factual underpinnings of the parties' consent election agreement. Since the Petitioner does not meet the standard for changing the specific terms of a consent election agreement as established in *Cincinnati Tech*, the existing unit as set forth in the consent election agreement negotiated and signed by the parties should stand intact. Therefore, the Petitioner has not met the *State of Ohio* or *Cincinnati Tech* standards, and the Petition for Amendment of Certification must be dismissed.

III. CONCLUSIONS OF LAW

1. The Darke County Sheriff is a “public employer” as defined by O.R.C. § 4117.01 (B).
2. The Fraternal Order of Police, Ohio Labor Council, Inc., is an “employee organization” as defined by O.R.C. § 4117.01 (D).
3. The Deputy Sheriffs employed by the Darke County Sheriff are “full-time deputy sheriffs appointed under section 311.04 of the Revised Code” and are “members of a police department” as defined by O.R.C. § 4117.01 (N).
4. The Petitioner has failed to meet the severance standard set forth in *In re State of Ohio*, SERB 95012 (6-30-95).
5. The Petitioner has not demonstrated that any substantial change has occurred in the factual underpinnings of the parties’ consent election agreement that would allow for amendment of the bargaining unit’s certification over the objections of the other party to the consent election agreement, as required under *In re Cincinnati Technical College*, SERB 94-018 (1 O-I 7-94).

IV. DETERMINATION

For the reasons above, we find that the Deputy Sheriffs employed by the Darke County Sheriff are “full-time deputy sheriffs appointed under section 311.04 of the Revised Code” and are “members of a police department” as that term is defined in O.R.C. § 4117.01(N). Since the Fraternal Order of Police, Ohio Labor Council, Inc. has not satisfied any standard for changing the composition of the existing bargaining unit over the Employer’s objections, the Petition for Amendment of Certification is hereby dismissed.

Pohler, Chairman, and Verich, Board Member, concur.