

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

In RE:

**WILMINGTON POLICE CAPTAINS** : Representation Petition  
**AND INSPECTORS** :  
**AND FOP LODGE NO. 1** : No. 97-08-218

Appearances

*Jeffrey M. Weiner, Esq., for Fraternal Order of Police, Lodge 1*  
*John W. Morgan, Esq., Assistant City Solicitor, for City of Wilmington*

**BACKGROUND**

The City of Wilmington (“City”) is a public employer within the meaning of §1602(l) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del.C. Chapter 16 (1986, “POFERA”).

Officers of the Wilmington Police Department, including Captains and Inspectors, are public employees within the meaning of 19 Del.C. §1602(k).

Fraternal Order of Police Lodge No. 1 (“FOP”) is an employee organization within the meaning of 19 Del.C. §1602(f). The records of the Department of Labor, Governor’s Council on Labor Case #54 establish FOP Lodge 1 was certified on June 6, 1969, as the exclusive bargaining representative of the bargaining unit of “Wilmington Policemen and Matrons, including all ranks below Inspector and excluding the Commissioner of Public Safety, the Chief of Police and Police Inspectors.” On May 17, 1972, FOP Lodge 1 was certified as the exclusive bargaining representative of a separate bargaining unit which included the Chief of Police and Inspectors of the Wilmington Police Department. (DOL Case #79). On October 24, 1990, the Public Employment Relations Board (“PERB”) modified each of the bargaining units, in accord with the agreement between the City and FOP Lodge 1, and consistent with the desires of the majority of the affected employees, as follows:

- 1) RE: DOL Revised Case #54:  
The position of Captain is hereby removed from this unit, such that the unit is

now constituted of “all City of Wilmington Policemen and Police Matrons including all ranks below Captain.”

- 2) RE: DOL Revised Case #79  
The unit is hereby amended to include Captains and exclude the Chief of Police, such that the unit is now constituted of “Captains and Inspectors of Police.”

In Re: City of Wilmington and FOP Lodge No. 1, Del. PERB, Rep. Pet. No. 90-10-054 (1990).

At all times relevant to this matter, FOP Lodge No. 1 has and continues to be the exclusive bargaining representative of each of these bargaining units, within the meaning of 19 Del.C. §1602(g). The City of Wilmington and FOP Lodge No. 1 are parties to two current collective bargaining agreements covering the two bargaining units, each with an expiration date of June 30, 1998.

On or about September 9, 1997, FOP Lodge 1 filed a petition seeking to consolidate the two existing bargaining units of Wilmington Police employees into one bargaining unit. The Petition was accompanied by authorization cards representing more than thirty percent (30%) of the Captains and Inspectors.

By letter dated October 14, 1997, the City opposed the proposed consolidation of the bargaining units.

A hearing was convened by the PERB on December 15, 1997. The parties filed responsive post-hearing argument.

### ISSUE

1. Whether the petition which seeks to consolidate the two existing bargaining units of City of Wilmington Police Officers currently represented by FOP Lodge No. 1 constitutes a petition to modify an existing bargaining unit and is, therefore, subject to the requirements of Rule 3.4(8) of the PERB’s Rules and Regulations?
2. If Rule 3.4(8) does not apply or the petition meets the conditions of Rule 3.4(8), are Captains and Inspectors appropriate, within the meaning of 19 Del.C. §1610(d), for inclusion in the bargaining unit with police officers below the rank of Captain?

## OPINION

The Police Officers and Firefighters' Employment Relations Act grants to police officers and firefighters the rights of organization and representation. The PERB has broadly construed employee representation as a fundamental statutory right of employees. Del. Public Employees Council 81, AFSCME, AFL-CIO, Local 439 v. University of Delaware, Del.PERB, Rep. Pet. 95-04-126 (1995).<sup>1</sup> Once a labor organization is certified as the exclusive bargaining representative of the designated unit "the desires of any group of employees within that unit relative to representation matters are expressed solely through decertification and certification procedures." Wilmington Firefighters, (Supra.).

This petition differs from the petition filed by the Battalion Chiefs of the Wilmington Fire Department. RE: Battalion Chiefs of the City of Wilmington Fire Department (Del.PERB, Rep. Pet. 95-06-142 (II PERB Binder 1253 (1995))). In that case, the Battalion Chiefs were unrepresented for purposes of collective bargaining and were seeking such representation from Local 1590 of the International Association of Firefighters. Unlike the WFD Battalion Chiefs, the Captains and Inspectors of the Wilmington Police Department are currently represented within a presumptively appropriate bargaining unit. A petition which seeks to change or modify that bargaining unit must meet the requirements of Regulation 3.4(8). In RE: DHSS Division of Mental Retardation Community Nurses, Del. PERB, Rep. Pet. 95-06-146 (II PERB Binder 1247 (1995)). The rule provides:

In the event there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created which is not covered by the existing bargaining unit definition, or there is some other compelling reason for the Board to consider modifying the designated bargaining unit, the public employer and/or the exclusive bargaining representative may file a petition with the Board ...

This Rule applies in situations where either the employer or the exclusive bargaining representative seeks to change a bargaining unit definition through the addition or deletion of positions or general

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<sup>1</sup> Prior PERB rulings decided under the Public School Employment Relations Act, 14 Del.C. Chapter 40 (1982, 1989) and/or the Public Employment Relations Act, 19 Del.C. Chapter 13 (1994), are controlling to the extent that

classifications of positions which do not come within the existing bargaining unit definition. Wilmington Battalion Chiefs, (Supra.). It is the petitioning party's responsibility to establish the existence of one of these conditions.

The current matter involves no new unrepresented. Nor is it alleged there has been a significant change in the duties, skills and/or working conditions of any of the represented classifications. Rather, the FOP argues compelling circumstances exist which support the consolidation of these units. Specifically, the Captains and Inspectors assert they are poorly served by the smallness of the existing unit (at the time of the hearing there were 8 Captains and 1 Inspector on the force). The FOP further alleges the opportunities for "real bargaining" on behalf of this unit are limited by the City's refusal to negotiate with this group until contracts with all other organized City employees are complete.

The last three contracts covering the bargaining unit of Captains and Inspectors were ratified retroactively, well after the effective date of those agreements. The July 1, 1990 - June 30, 1993 contract was signed by the parties on March 6, 1991 (eight months into the contract term); the July 1, 1993 - June 30, 1995 contract was signed on March 15, 1996 (eight months after the contracts expiration); and the July 1, 1995 - June 30, 1998 contract was signed on June 27, 1997 (nearly one year into the contract term). Because the City has bargained last with Captains and Inspectors over the last several negotiations, the FOP argues there are very few issues which are not predetermined by the contracts which have been negotiated with other organized City employees.

Despite the FOP's argument, the record reveals substantive differences in the agreements which have been negotiated for the two groups of police officers which benefit the Captains and Inspectors. The holiday pay for Captains and Inspectors is rolled into their base salary and therefore counts toward the base salary computation for pension calculation purposes. Captains and Inspectors receive incentive pay based upon their annual performance evaluation. While they do not receive a shift differential, at the time of the hearing only one Captain was required to work on an alternate shift each week, such that Captains only work the 4 p.m. to 2 a.m. shift once every eight weeks. Officers in the rank and file bargaining unit

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the relevant portions of those statutes are identical to those of the Police Officers' and Firefighters' Employment

do not enjoy these benefits. While there are many similarities between the contracts, it is evident Captains and Inspectors have successfully negotiated or maintained significant benefits during the course of collective bargaining negotiations.

There is no history between the City of Wilmington and the Captains and Inspectors unit which supports the inference that the City has failed to negotiate in good faith with this bargaining unit. There exists no long-standing pattern of filing of charges or finding of unfair labor practices against the City to support the inference this unit has been mistreated or otherwise discriminated against in its negotiations with the City.

The history of these bargaining units confirms Inspectors have been represented by the FOP in a separate bargaining unit for the past twenty five years, and that as recently as 1990, the Captains felt it to be in their best interest to also be separated from the rank and file for purposes of bargaining. There is nothing on the current record to indicate that circumstances have changed sufficient to establish there is a compelling reason to modify the existing structure of the bargaining unit, except, the desires of this particular group of Captains and Inspectors. The desires of the employees and the union, standing alone, do not constitute “compelling reason,” particularly where, as here, the employer has objected to the proposed modification.

In summary, this record does not support a finding that there is a compelling reason to consider modifying the existing bargaining unit structure.

Having failed to satisfy one or more of the threshold criteria set forth in Rule 3.4(8) necessary to filing a proper modification petition, it is unnecessary to consider whether a single bargaining unit of all police officers at or below the rank of Inspector is appropriate under 19 Del.C. §1610(d).

### **DECISION**

Consistent with the foregoing discussion, Representation Petition No. 97-09-218 is dismissed for the reason that it fails to satisfy one or more of the threshold criteria set forth in PERB Rule 3.4(8).

IT IS SO ORDERED.

/s/Deborah Murray-Sheppard

Deborah L. Murray-Sheppard

Hearing Officer

Delaware Public Employment Relations Bd

DATED: June 4, 1998