

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

In RE:

**WILMINGTON POLICE CAPTAINS** : PERB Decision on Request  
**AND INSPECTORS** : for Review  
**AND FOP LODGE NO. 1** : Rep. Pet. No. 97-09-218 A

**BACKGROUND**

The City of Wilmington (“City”) is a public employer within the meaning of §1602(1) of the Police Officers’ and Firefighters’ Employment Relations Act, 19 Del.C. Chapter 16 (1986) (“Act”).

Police 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).

On September 9, 1997, FOP filed a Representation Petition seeking to consolidate the existing bargaining unit of police officers holding the ranks of Patrolperson through Senior Lieutenant and the second bargaining unit consisting of police officers holding the ranks of Captains and Inspectors into one bargaining unit.

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

A hearing was held by the PERB on December 15, 1997, following which both parties filed post-hearing briefs.

The Hearing Officer for PERB, under date of June 4, 1998, issued her decision in which she ruled that "...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)."

On June 9, 1998, Wilmington Fraternal Order of Police Lodge No. 1 requested review of the Hearing Officer's Decision pursuant to PERB Rule 7.4. The Board met, *en banc*, on July 8, 1998, to consider the matter.

### **DISCUSSION**

The issue presented to the Board by the aforementioned appeal is the same issue the hearing officer ruled upon, namely, "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."

Rule 3.4(8) 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...

After a thorough review of the record in this case, the Board concludes that the current petition is not predicated upon a change in duties and/or working conditions of the Captains and Inspectors, the creation of a new position, or some other compelling reasons for modifying the unit.

Furthermore, the Captains and Inspectors are currently represented, have negotiated significant benefits into their existing agreements, and produced no probative evidence that being

represented as a separate unit has resulted in a diminution of their statutory right to representation.

**DECISION**

Having failed to establish the existence of one or more of the three required conditions for modifying a bargaining unit as required by PERB Regulation 3.4(8), the Board votes unanimously to uphold the Hearing Officer's Decision dated June 4, 1998.

**IT IS SO ORDERED.**

/s/Henry E. Kressman  
HENRY E. KRESSMAN, Chairman

/s/John D. Daniello  
JOHN D. DANIELLO, Member

/s/James F. Maher  
JAMES F. MAHER, ESQUIRE, Member

DATED: 9 July 1998