

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

IN THE MATTER OF THE EMPLOYES OF :  
 :  
 : Case No. PF-R-02-113-E  
 :  
LEBANON COUNTY :

**FINAL ORDER**

On July 14, 2004, Lebanon County (County) filed timely exceptions to a Nisi Order of Certification issued on June 25, 2004, by the Pennsylvania Labor Relations Board (Board) certifying the International Association of Firefighters, Local 3969 (Union) as the exclusive bargaining representative of all full-time and regular part-time firefighters including but not limited to control room supervisor, training officer and planning officer in the County's Emergency Management Agency's Certified Hazardous Material Response Team (Hazmat Team members); and excluding managerial employees. The certification was issued pursuant to a representation election conducted on March 16, 2004, in which four (4) Hazmat Team members voted for such representation by the Union and zero (0) Hazmat Team members voted against such representation.

The County filed two exceptions to the Nisi Order of Certification, asserting that 1) members of the Hazmat Team are not "firemen" within the meaning of Act 111 of 1968 (Act 111) and 2) the certification of the Union as the Hazmat Team's exclusive representative resulted in over-fragmentization of the County's Emergency Management Agency's (EMA) work force in violation of 43 P.S. § 1101.604(1)(ii).

In its first exception, the County objects to the Board's conclusion that the Hazmat Team members are "firemen" within the meaning of Act 111. The Board extensively addressed this issue in its Order Directing Remand To The Hearing Examiner For Further Proceedings (Remand Order). See In the Matter of the Employees of Lebanon County, 34 PPER 163 (Remand Order, 2003). In that order, the Board found that the Hazmat Team members were legislatively authorized to act as firemen, and that they effectively act as firemen. See In the Matter of the Employees of Lebanon County, *supra* (citing Delaware County Lodge No. 27, FOP v. PLRB, 690 A.2d 754 (Pa. Cmwlth. 1997), appeal denied, 548 Pa. 647, 698 A.2d 597 (1997)). Relying on the analysis and findings contained in the Remand Order, the Board reaffirms its decision that the Hazmat Team members are firemen within the meaning of Act 111 and dismisses this exception.

In its second exception, the County asserts that certifying the Union as the exclusive representative resulted in the over-fragmentization of the County's EMA. First, the remaining EMA workforce excluding the Hazmat Team, are public employes within the definition of the Public Employee Relations Act (PERA), which expressly excludes all Act 111 employes from its coverage. See 43 P.S. § 1101.301(2). Since the Hazmat Team members are employes within the definition of Act 111

and the remaining EMA workforce are public employes within the meaning of PERA, the two are statutorily precluded from inclusion in the same bargaining unit for purposes of representation. Second, even if fragmentation provisions applied here, the Union represents all of the County's firefighters. Therefore this exception is dismissed.

Accordingly, the exceptions filed by the County must be dismissed and the Nisi Order of Certification shall be affirmed.

ORDER

In view of the foregoing and in order to effectuate the policies of Act 111 of 1968 and the Pennsylvania Labor Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed in the above-captioned matter be and the same are hereby dismissed and the Nisi Order of Certification issued by the Board Representative be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, and Anne E. Covey, Member, this seventeenth day of August, 2004. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code § 95.81(a), to issue and serve upon the parties hereto the within Order.