

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

HUDSON COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Public Employer,

-and-

SUPERIOR OFFICERS LODGE #77-A,
ASSOCIATED WITH FOP LODGE #77,

DOCKET NO. RO-78-108

Petitioner,

-and-

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 109,

Party-at-Interest.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, directs a secret ballot election among the sergeants, captains and deputy wardens of the County Jail, to determine whether they wish to be represented by the FOP for collective negotiations. While the PBA had stated that it was the current representative of the above employees, the PBA could not be granted intervenor status as it failed to submit either a current or recently expired agreement with the County covering the employees involved, or a showing of interest among the employees. Moreover, the PBA failed to indicate the establishment of a separate organizational chapter to represent superior officers. Therefore, the Director determines that the PBA does not have standing to participate in this matter and may not participate in the secret ballot election to be conducted among employees described above.

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POLICEMEN'S BENEVOLENT ASSOCIATION,

Party-at-Interest.

Appearances:

For the Public Employer
Murray, Granello & Kenney, Esqs.
(Malachi J. Kenney, of Counsel)

For the Petitioner
Joseph Flynn, President

For the Party-at-Interest
Vitale & Wilewski, Esqs.
(Vincent A. Vitale, of Counsel)

DECISION AND DIRECTION OF ELECTION

On December 5, 1978, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Fraternal Order of Police, Lodge #77 (the "FOP") 1/ seeking to represent a

1/ On May 31, 1978, the FOP formally amended its Petition with the Commission confirming the creation of a separate Lodge for Superior Officers, designated as Superior Officers Lodge #77-A, associated with FOP Lodge #77, as set forth in the caption to this matter, and in response to the Commission's requirement, infra, ¶8.

unit of "sergeants, captains and deputy wardens" employed by Hudson County (the "County") at the County Jail. The Petition is supported by an adequate showing of interest as required by N.J.A.C. 19:11-1.2.

The undersigned has caused an administrative investigation to be conducted in order to determine the facts. All parties have been provided with an opportunity to present documentary and other evidence raising substantial and material factual issues which would warrant the convening of a hearing pursuant to N.J.A.C. 19:11-2.6.

On the basis of the administrative investigation herein the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, and it appearing that no substantial and material factual issues exist which may more appropriately be resolved after a hearing. Pursuant to N.J.A.C. 19:11-2.6(c) there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The County of Hudson is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), and is subject to the provisions hereof.

3. The Superior Officers Lodge #77-A, associated with FOP Lodge #77, is an employee representative within the meaning of the Act and is subject to the provisions thereof.

4. The Policemen's Benevolent Association, Local 109 (the "PBA") is an employee representative within the meaning of the Act and is subject to the provisions thereof. The PBA claims that it is the current collective negotiations representative of the superior officers. However, the PBA has not submitted a current or recently expired agreement with the County covering any of the employees involved or a showing of interest among the employees, as required by N.J.A.C. 19:11-2.7, in order to support a claim to participate in this matter fully as an intervening party. ^{2/} For the purposes of a more expeditious resolution of the question concerning the representation of the petitioned-for employees, the PBA was permitted to participate in conferences and to advance its position concerning the instant matter, pending a proper request to intervene.

5. At an informal conference held with the parties by the assigned staff member on February 23, 1978, concerning this matter as well as a related matter, Commission Docket No. RO-78-107, involving a Petition filed by the FOP with respect to correction officers below the rank of sergeant, the County and the PBA raised a question concerning the timeliness of the filing

^{2/} N.J.A.C. 19:11-2.7(a) provides that "No employee organization will be permitted to intervene in any proceeding to resolve a question concerning the representation of employees unless it has submitted a showing of interest of not less than 10 percent of the employees in the unit involved in the petition or has submitted a current or recently expired agreement with the public employer covering any of the employees involved. An employee organization will be permitted to intervene in a proceeding to resolve a question concerning the representation of public employees if it has been accorded recognition in accordance with N.J.A.C. 19:11-3.1 (Recognition as exclusive representative)..."

of the instant Petition, and subsequently the parties submitted statements of position to the undersigned. By letter dated March 21, 1978, the undersigned rejected the contentions of the County and the PBA that an unexecuted agreement covering the correction officers below the rank of sergeant should bar the filing of the instant Petition, and directed the assigned staff member to continue the processing of this Petition, as well as RO-78-107 involving correction officers.

6. At a second informal conference conducted by the assigned staff member on April 13, 1978, the positions of the parties concerning this Petition were stated as follows:

The County, represented by its labor counsel, John Dizzia of Murray, Granello & Kenney, Esqs., indicated its willingness to enter into an Agreement for Consent Election to be conducted among the petitioned-for employees. The PBA indicated that it was not willing to consent to an election for superior officers (sergeants, captains, and deputy wardens) unless and until the matter concerning the petitioned-for correction officers (RO-78-107) was resolved.

7. On May 23, 1978, the undersigned advised all parties that the instant matter would be further processed and an election directed provided certain conditions were met within seven (7) days. The FOP would be required to indicate the formation of a separate chapter to represent superior officers, as required by Commission policy, inasmuch as the FOP also seeks to represent non-superior officers in Docket No. RO-78-107, see In re City of Camden, P.E.R.C.

No. 52 (1971). The PBA would be required to perfect its request for intervenor status, as required by N.J.A.C.19:11-2.7(a), and it would also be required to indicate the formation of a separate chapter for the same reasons described immediately above. The PBA was advised that in the absence of meeting both of the above requirements it would have no further standing in this matter.

8. On May 31, 1978, the FOP amended its Petition indicating the creation of a separate chapter for superior officers to be known as Superior Officers Lodge #77-A, associated with FOP Lodge #77. The undersigned has accepted this amendment to the Petition. The PBA has not responded to the undersigned's letter of May 23, 1978. Accordingly, the PBA, not having perfected its request for intervention in this matter, does not have standing to participate in this matter and may not participate in a secret ballot election to be conducted among the employees described above.

The undersigned determines that there are no substantial and material factual issues in dispute warranting an evidentiary hearing. Both the County and the FOP have indicated that the petitioned-for unit is appropriate for collective negotiations. Therefore, the undersigned shall direct an election among the employees in the unit described as all "sergeants, captains, and deputy wardens employed by Hudson County at the County Jail."

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees

described above. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they are ill, on vacation, or temporarily laid-off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.


Pursuant to N.J.A.C. 19:11-9.6, the County is directed to file with the undersigned and with Superior Officers Lodge #77-A, associated with FOP Lodge #77 an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with Superior Officers Lodge #77-A, associated with FOP Lodge #77, with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote whether or not they desire to be represented for the purposes of collective negotiations

by Superior Officers Lodge #77-A, associated with FOP Lodge #77.

A majority of valid ballots cast shall determine the results of the election. The election directed herein shall be conducted in accordance with the Commission's Rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: June 19, 1978
Trenton, New Jersey