

D.R. No. 2006-6

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

In the Matter of

STATE OF NEW JERSEY,  
DEPARTMENT OF CORRECTIONS,

Public Employer,

-and-

POLICEMEN'S BENEVOLENT ASSOCIATION,           Docket No. RO-2006-034  
LOCAL 105 OF THE NEW JERSEY STATE PBA,

Petitioner,

-and-

NEW JERSEY STATE CORRECTIONS ASSOCIATION,  
INC., AFFILIATED WITH THE FRATERNAL ORDER  
OF POLICE LODGE 200,

Intervenor.

**SYNOPSIS**

The Director of Representation directs an election for non-supervisory law enforcement officers employed by the State of New Jersey over the objection of the intervenor-incumbent representative FOP Lodge 200 which collaterally attacked the showing of interest that supported the representation petition filed by PBA Local 105.

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Appearances:

For the Public Employer,  
Peter C. Harvey, Attorney General  
(Geri Benedetto, Deputy Attorney General)

For the Petitioner,  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman,  
attorneys  
(Robert A. Fagella, of counsel)

For the Intervenor,  
Joseph Carmen, attorney

**DECISION**

On October 26, 2005, the Policemen's Benevolent Association, Local 105 of the New Jersey State PBA (PBA) filed a representation petition seeking to represent law enforcement officers in particular titles employed by the State of New Jersey

(State). On November 16, 2005, the New Jersey State Corrections Association, Inc., affiliated with the Fraternal Order of Police Lodge 200 (FOP) requested to intervene in this matter on the basis that it currently represents the petitioned-for officers. The FOP submitted a fully executed memorandum of agreement and a copy of its collective agreement covering the period July 1, 2003 through June 30, 2007 evidencing that it, in fact, currently represents the petitioned-for employees. As the FOP's request conformed with the requirements of N.J.A.C. 19:11-2.7, I granted its intervention on November 16, 2005.

An investigatory conference was held on November 22, 2005. At that conference, the parties were advised that the PBA's representation petition was timely filed and supported by an adequate showing of interest. Pursuant to N.J.A.C. 19:11-4.1, we sought an agreement by the parties for a consent to the conduct of a secret ballot election. The PBA and the State were willing to consent to an election. The FOP refused to consent to an election.

In accordance with N.J.A.C. 19:11-2.6, I have conducted an investigation in this matter. The FOP objects to holding an election claiming that 175 names included in the showing of interest that supported the petition should not be counted. It, therefore, asserts that the PBA's membership records should not be used in the showing of interest at least regarding those 175 names. In support of its claim, the FOP provided affidavits from

approximately 175 unit members claiming that they accepted free membership to the PBA in order to obtain free items such as pens and books, and did not join for the purpose of having the PBA represent them in collective negotiations or other labor matters. The FOP argues that the free membership and free items were offered merely to entice a signature on a card to garner a sufficient showing of interest.

### ANALYSIS

The FOP and State are parties to a four year collective negotiations agreement covering the period July 1, 2003 to June 30, 2007. Pursuant to N.J.A.C. 19:4-2.8(d), four year agreements shall be treated as three year agreements in determining the timeliness of representation petitions.

N.J.A.C. 19:11-2.8 provides in pertinent part:

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency of the State or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;. . .

(d) For the purpose of determining a timely filing, an agreement for a term in excess of three years will be treated as a three-year agreement and will not bar a petition filed

at any time after the end of the third year of the agreement; an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date and will not bar a petition filed at any time after the end of the first year of the agreement.

The PBA filed its representation petition on October 26, 2005, which is not less than 240 days and not more than 270 days before the expiration of the third year of the agreement. Consequently, the PBA's petition is timely.

Current dues records are an appropriate form of a showing of interest.

N.J.A.C. 19:10-1.1 defines showing of interest as:

. . . a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; **current dues records**; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any

other employee representative. [emphasis added]

N.J.A.C. 19:11-2.1 further provides that:

The showing of interest shall not be furnished to any of the parties. The Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. Neither the nature nor the size of the showing of interest shall be divulged. The showing shall be returned to the petitioner once the case is closed.

In Jersey City Medical Center, D.R. No. 83-19, 8 NJPER 642, 643 (¶13308 1982), we held that the submission of a showing of interest is an administrative requirement intended to ensure that sufficient interest exists among employees to warrant the use of Commission resources in processing the petition. We explained that challenges questioning the validity of a showing are to be raised prior to the informal conference. The FOP did not comply with that requirement.

We have also long held that ". . . it is inappropriate in a representation forum to permit parties to litigate allegations that authorization cards have been procured by fraud, misrepresentation, or coercion or that they have been revoked or that they are stale. Rather, we have determined that the best method to discover employees' true choice as to which organization, if any, they wish to designate as their negotiations representative is by providing employees a secret ballot election." Borough of Paramus, D.R. No. 95-11, 21 NJPER

25, 26 (¶26015 1994); Essex Cty., D.R. No. 85-75, 11 NJPER 433 (¶16149 1985); City of Orange Tp., D.R. No. 85-10, 11 NJPER 33 (¶16018 1984); Jersey City Medical Center; Woodbridge Tp. Bd. of Ed. D.R. No. 77-9, 3 NJPER 26 (1977).

The Commission in Hudson County Community College, P.E.R.C. No. 85-117, 11 NJPER 369 (¶16131 1985) explained the basis for preferring the conduct of a secret ballot election to address alleged irregularities with the showing. It held:

N.J.A.C. 19:11-2.1 provides that the Director shall determine the showing of interest and prohibits a collateral attack on that determination. See State of New Jersey, P.E.R.C. No. 81-94, 7 NJPER 105 (Para. 12044 1981). This regulation embodies the practice of the National Labor Relations Board which also prohibits hearings or appeals concerning such a determination. Morris, The Developing Labor Law (2nd Ed. 1983) at 343-344; R. Gorman, Basic Text on Labor Law (1970) at 42; Guide for Hearing Officers in NLRB Representation Proceedings (1975) at 10. It reflects the Commission's and the NLRB's shared belief that the best method for correcting any alleged errors in showing of interest determinations is a secret ballot election, State of New Jersey, supra. [11 NJPER at 370]

Additionally, the Court in the case relied upon by the FOP to support its claim, In the Matter of the City of Newark, 346, N.J. Super. 460, 466, 28 NJPER 128, 129 (App. Div. 2002), actually supported the Commission's long standing practice of having questions concerning the adequacy of the showing be resolved by the conduct of a secret ballot election. The Court

held, "Any error made in determining a 'showing of interest' will be remedied by the election itself."

After careful review, I have determined that the showing of interest which supports the PBA's representation petition is consistent with our rules and adequate. Therefore, pursuant to N.J.A.C. 19:11-2.6(c)3, I direct a secret ballot election among the employees in the petitioned-for historical unit as described below:

Included: All law enforcement employees including full-time permanent and provisional employees of the State of New Jersey in the following titles: 12041-Aeronautical Operation Specialist, 32271-Campus Police Officer, 32081-Conservation Officer 3, 32641-Correction Officer Recruit, 40804-Correction Officer Recruit, Juvenile Justice, 32991-Inspector ABC, 61769-Parole Officer, Recruit, 40803-Parole Officer Recruit, Juvenile Justice, 32332-Police Officer Health Care Facility, 32352-Police Officer PIP, 32090-Ranger Trainee, 32092-Ranger 1, 32642-Senior Correction Officer, 40808-Senior Correction Officer, Juvenile Justice, 32992-Senior Inspector ABC, 32662-Senior Interstate Escort Officer, 61773-Senior Parole Officer, 40806-Senior Parole Officer, Juvenile Justice, 51342-Special Agent Trainee, 51344-Special Agent 2, 51343-Special Agent 3, 33083-Weights and Measures Inspector I, 33082-Weights and Measures Inspector II, and 33081-Weights and Measures Inspector II.

Excluded: Managerial Executives, Supervisors, State Troopers, employees represented in other certified bargaining units, classifications within the Department of Higher Education except those in the State College System, all other employees of the State of New Jersey not included within the Statewide Law Enforcement Unit, confidential employees and non-police employees.

#### ORDER

I order an election among the employees in the unit described above to determine whether they wish to be represented by Policemen's Benevolent Association, Local 105 of the New



Jersey State PBA; or New Jersey State Corrections Association, Inc., affiliated with the Fraternal Order of Police Lodge 200 or no representative. The election will be conducted by mail ballot. Employees described in the unit who were on the payroll during the pay period immediately preceding the date of this decision shall be eligible to vote in the election.

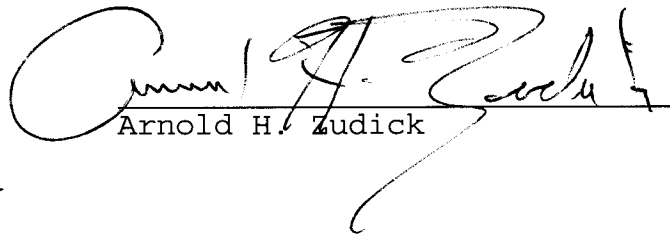
Ballots will be mailed to eligible voters on **January 19, 2006**. Ballots shall be returned to the Commission post office box by 10:00 a.m. on **March 7, 2006**. The ballots will be counted on **March 7, 2006** at 11:00 a.m. at a site to be determined by the Commission.

Pursuant to N.J.A.C. 19:11-10.1, the State is directed to file with us an eligibility list at least consisting of an alphabetical listing of the names of all eligible voters in the unit described above, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by no later than **December 22, 2005**. A copy of the eligibility list shall also be simultaneously provided to PBA Local 105 and FOP Lodge 200 with a statement of service filed with us. We shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Eligible employees shall vote on whether they wish to be represented for purposes of collective negotiations by Policemen's Benevolent Association, Local 105 of the New Jersey

State PBA; or New Jersey State Corrections Association, Inc., affiliated with the Fraternal Order of Police Lodge 200 or no representative. The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick

Dated: December 2, 2005  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by December 15, 2005.