

D.R. NO. 90-33

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

F.O.P. LODGE NO. 71,

Docket No. RO-90-147

Petitioner,

-and-

P.B.A. LOCAL NO. 153,

Incumbent.

SYNOPSIS

The Director of Representation orders an election to determine the representational desires of Essex County corrections officers. The Director finds that an interest arbitrator's economic award has the force and effect of a contract. Since that award expired, the petition for public employee representative is timely.

The Director dismisses the incumbent's argument that the arbitrator's continued jurisdiction over non-economic items should be treated as an unexpired contract. The Director also finds that the incumbent's argument that its continued recognition by the County since its 1976 certification acts as a recognition bar is without merit.

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Appearances:

For the Public Employer  
Office of the Essex County Counsel  
(Lucille LaCosta-Davino, attorney)

For the Petitioner  
Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

For the Incumbent  
Rinaldo & Rinaldo, attorneys  
(Anthony D. Rinaldo, of counsel)

DECISION AND DIRECTION OF ELECTION

On April 20, 1990, the Fraternal Order of Police Lodge 71 ("FOP") filed a Petition for Certification of Public Employee Representative (Docket No. RO-90-147), supported by an adequate showing of interest, with the Public Employment Relations Commission ("Commission"). The FOP seeks to represent a unit of all corrections officers employed by Essex County ("County") at its

Newark, New Jersey corrections facility.<sup>1/</sup> The petitioned-for employees are currently represented by Policeman's Benevolent Association Local 153 ("PBA"). The PBA submitted a copy of an interest arbitration award between the PBA and the County covering a two year agreement from January 1, 1987 to June 30, 1989 and has been granted intervenor status pursuant to N.J.A.C. 19:11-2.7. The PBA refuses to consent to an election. It argues that the petition was not timely filed under N.J.A.C. 19:11-2.8(b) and (c). The PBA also contends that the FOP has not complied with N.J.A.C. 19:11-3.1. The County takes no position in this matter.

On May 24, 1990, a Commission agent conducted an informal investigatory conference pursuant to N.J.A.C. 19:11-2.2 and 2.6 in order to determine the relevant facts. It appears that there are no substantial and material factual issues in dispute which may more appropriately be resolved through the conduct of a formal hearing. N.J.A.C. 19:11-2.6(b). Accordingly, the disposition of the petition is properly based on our administrative investigation.

N.J.A.C. 19:11-2.8(c)(2) provides in pertinent part that:

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

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<sup>1/</sup> The petitioned-for unit was certified in 1976 as "All County corrections officers employed at the Essex County Jail." There is another County corrections facility in Caldwell that is commonly referred to as the jail annex. The two facilities have a history of separate bargaining units and corrections officers working at the Caldwell corrections facility are not the subject of this petition.

of Public Employee Representative...normally will not be considered timely filed unless: 2. In a case involving employees of a county or municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement.

The interest arbitration award between the County and the PBA covers an economic package for January 1, 1987 through June 30, 1989. The interest arbitrator retained jurisdiction pending execution of the complete agreement between the parties covering all terms and conditions of employment.

The Commission has held that where parties have utilized interest arbitration as a mechanism to resolve their contractual dispute, an arbitrator's award may satisfy the requirements of N.J.A.C. 19:11-2.8. Vineland Police Department, D.R. No. 82-53, 8 NJPER 323 (¶13147 1982); Hudson Cty. Bd. of Chosen Freeholders, D.R. No. 78-14, 3 NJPER 295 (1977). An interest arbitration award that sets forth substantive terms and conditions of employment for a fixed period of time has the force and effect of a written agreement, and therefore, is sufficient to bar the filing of a petition for certification under N.J.A.C. 19:11-2.8(c). Vineland, Hudson Cty. The fixed period of time for the arbitration award between the County and the PBA is January 1, 1987 through June 30, 1989. Therefore, the existing written agreement between the parties expired on June 30, 1989 and does not bar the filing of a petition for public employee representative under N.J.A.C. 19:11-2.8(c).

The PBA contends that since the interest arbitrator retained jurisdiction, the contract has not expired and should be barred under N.J.A.C. 19:11-2.8(c). The PBA's position would convert the arbitration award to one of indefinite duration. The Commission has held that a contract on its face must permit employees or outside unions to predict contract terms with reasonable certainty and that contracts without duration clauses are treated as agreements for an indefinite term. Atlantic City, P.E.R.C. No. 82-81, 8 NJPER 137 (¶13059 1982). N.J.A.C. 19:11-2.8(d) provides in pertinent part that "For the purposes of determining a timely filing,...an agreement for an indefinite term shall be treated as a one-year agreement measured from its effective date." Application of the PBA's argument results in a one year agreement measured from the effective date of the interest arbitration award -- January 1, 1987. Therefore, the FOP's petition is still timely under N.J.A.C. 19:11-2.8(c).

The PBA also contends that the County's continuing recognition of the PBA as evidenced by the arbitration award, meetings, correspondence and negotiations for a successor agreement should serve to bar the FOP's petition under N.J.A.C. 19:11-2.8(b). This contention is without merit. N.J.A.C. 19:11-2.8(b) provides that:

Where there is a certified or recognized representative, a petition for certification or decertification will not be considered timely filed if during the preceding 12 months an employee organization has been certified by the commission as the exclusive representative of

employees in an appropriate unit, or an employee organization has been granted recognition by a public employer pursuant to N.J.A.C. 19:11-3.1 (Recognition as exclusive representative)." (emphasis added)

N.J.A.C. 19:11-2.8(b) grants 12 months of protection to recently recognized negotiations relationships provided the initial recognition agreement has been formalized under a procedure set forth in N.J.A.C. 19:11-3.1. Bergen County Superintendent of Elections, D.R. No. 84-10, 9 NJPER 629 (¶14269 1983). PBA Local 153 was certified by the Commission as the representative of all county corrections officers employed at the Essex County Jail on March 23, 1976.<sup>2/</sup> The PBA was neither certified nor recognized by the County within the past 12 months and the instant petition is not untimely under N.J.A.C. 19:11-2.8(b).

The PBA also alleges that the FOP has not complied with N.J.A.C. 19:11-3.1. This section governs an employer's voluntary recognition of an employee organization. The FOP has not requested voluntary recognition; it has filed a representation petition. There have been no facts alleged to support this allegation.

Based upon the foregoing, I find that the petitioned-for unit is appropriate. Accordingly, I order that an election be conducted to determine the representational desires of the petitioned-for employees in the unit described as follows:

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<sup>2/</sup> Docket No. RO-76-47.

Included: All regularly employed rank and file corrections officers employed by the County of Essex at its Newark, New Jersey corrections facility.

Excluded: All superior corrections officers, including captains, lieutenants and sergeants, non-law enforcement personnel, supervisory employees, managerial executives, confidential employees, craft employees and professional employees.

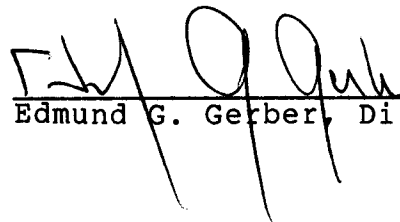
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned 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 public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the units, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization 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.

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

  
Edmund G. Gerber, Director

DATED: June 29, 1990  
Trenton, New Jersey