

D.R. NO. 2004-5

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

Docket No. RO-2004-20

NEW JERSEY STATE PBA,

Petitioner,

-and-

NEW JERSEY STATE CORRECTIONS ASSOCIATION,  
AFFILIATED WITH FOP,

Intervenor.

**SYNOPSIS**

The Director of Representation dismisses a Petition for Certification seeking to sever employees from an existing broad-based law enforcement unit. The petition was filed after a Consent Agreement was executed and while an election was being conducted in a cross-petition for the broader, existing unit. The Director found that the Petition was untimely filed and that the PBA had waived its right to seek a different unit when it signed the Consent Agreement.

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Appearances:

For the Public Employer  
Governor's Office of Employee Relations  
(Camille Warner-Anthony, Employee Relations Coord.)

For the Petitioner  
Oxford Cohen, attorneys  
(Sanford R. Oxford, of counsel)

For the Intervenor  
Markowitz & Richman, attorneys  
(Stephen Richman, of counsel)

**DECISION**

On August 29 and September 11, 2003, the New Jersey State PBA filed a Petition for Certification and an amended Petition with the Public Employment Relations Commission seeking to represent a collective negotiations unit of "all law enforcement employees [employed by the State of New Jersey] currently

included in the State Law Enforcement Unit, excluding all employees of the Department of Corrections and employees in the title Juvenile Justice Corrections Officer . . . and supervisors . . . ."

The New Jersey State Corrections Association, affiliated with Fraternal Order of Police (FOP) has intervened in this matter, also claiming a representation interest in these employees as part of a cross-petition, RO-2003-77. Pursuant to N.J.A.C. 19:11-2.7, FOP's intervention has been approved. FOP objects to the PBA's petition in this matter and argues that the petition is untimely and that the PBA is estopped from filing it. It further maintains that the proposed negotiations unit is inappropriate. The State has not taken a formal position in this matter.

Pursuant to N.J.A.C. 19:11-2.2 and 2.6, we have conducted an administrative investigation in this matter to determine the facts and the positions of the parties. The investigation reveals that there are no substantial, material facts in dispute which would warrant the convening of a hearing. Accordingly, based upon the administrative investigation, I find the following:

Since February 1972, the New Jersey State PBA has been the certified negotiations representative of a unit of New Jersey State law enforcement employees, known as the State Law

Enforcement Unit (SLEU) unit, and comprised of corrections officers, parole officers, campus police, Palisades Park police, marine police, park rangers, interstate escort officers, weights and measures inspectors, ABC inspectors, conservation officers, aeronautical operations specialists, and special agents. The employees holding the various corrections officer titles comprise about 88 percent of the existing SLEU unit of about 7000 employees. The unit proposed by the PBA's petition in RO-2004-20 includes only the non-corrections employees - approximately 842 employees.

The State PBA has separate locals assigned to represent the various components of the SLEU unit. These locals together are known as the State Law Enforcement Conference (SLEC). The largest group - corrections officers - are members of PBA Local 105.

On March 18, 2003, the State FOP filed a petition for certification seeking to represent the existing SLEU unit. As the incumbent certified representative, SLEC/PBA was granted intervenor status in that petition and fully participated in the petition's investigation and processing. On April 2 through April 14, 2003, the State posted Notices to Public Employees advising employees that the petition had been filed and invited all parties to approach the Commission and make their interest in representing unit employees known. Other than the incumbent SLEC/PBA, no other employee organization moved to intervene.

On April 1, 2003, all parties executed an Agreement for Consent Election, which set the parameters for a secret ballot election to be conducted by the Commission among SLEU unit employees. Specifically stated in the Consent, the parties stipulated that the existing constituent parts comprising the SLEU negotiations unit continues to be the appropriate unit for purposes of collective negotiations. The Consent also contains a provision stating that all parties, by entering into the Consent, waive their rights to raise any issue(s) which might be raised in a hearing. On April 14, 2003, I approved the Consent Agreement. On April 15, PBA Local 328 submitted a written request to intervene, seeking to represent a separate unit of parole officers. By letter of April 17, I denied Local 328's intervention, based upon its failure to submit the requisite showing of interest from employees, pursuant to N.J.A.C. 19:11-2.7(b).<sup>1/</sup>

Pursuant to the terms of the Consent Agreement, from July 1 through July 23, the Commission conducted a mail ballot election among the SLEU unit's employees. The ballot choices provided to employees included representation by SLEC/PBA or the Corrections Association/FOP, or employees could have chosen no representative. On July 30 and 31, the SLEC/PBA filed objections

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<sup>1/</sup> Even if the April 15 intervention request had been supported by a showing of interest, it too would have been dismissed for the same reasons expressed in this decision.

to the election, asking that the election be set aside and a new election conducted among the unit employees. A determination on the election objections is pending.

#### ANALYSIS

The FOP argues that instant PBA petition is barred by the pending petition and election conducted in the overall unit. FOP argues that, if the Petitioner, New Jersey State PBA, is a different organizational entity than the incumbent PBA, then it should have sought to intervene in RO-2003-77 prior to the approval of the consent agreement. FOP further asserts that if the Petitioner New Jersey State PBA is the same entity as the incumbent PBA, then the PBA should be estopped from seeking a different unit than the existing unit which it agreed to in the Consent while the election in the main unit is pending and its cross-petition should be dismissed.

N.J.S.A. 34:13A-6 charges this Commission with deciding the appropriate negotiations unit and conducting elections to determine employees' choice of their representative.<sup>2/</sup> But the Act also contains a policy statement expressing as its goal the

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2/ N.J.S.A. 34:13A-6(d). The commission, through the Division of Public Employment Relations, is hereby empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees. The division shall decide in each instance which unit of employees is appropriate for collective negotiations . . . .

promotion of labor peace and stability. N.J.S.A. 34:13A-1. In an effort to balance these two important statutory goals, the Commission has adopted rules limiting the filing of representation petitions to certain time periods. See State of New Jersey, P.E.R.C. No. 94-89, 20 NJPER 184 (¶25083 1994).

N.J.A.C. 19:11-2.8 regulates the filing times for representation petitions. However, this provision contemplates the initiation of a question concerning representation. Once the question concerning representation is raised, Notices to Public Employees are posted in an effort to ascertain whether there is employee interest in other potential representatives. Our Rules provide certain time limitations on intervention in the representation proceeding by other employee organizations.

N.J.A.C. 19:11-2.7 provides,

(f) A request by an employee organization to intervene in a representation proceeding may be made at any time before:

1. The opening of a hearing held pursuant to N.J.A.C. 19:11-6.1 (Hearings); or
2. The issuance of a decision by the Director of Representation without a hearing, pursuant to N.J.A.C. 19:11-2.6 (Investigation of petition; disposition); or
3. Approval by the Director of Representation of an agreement for consent election, pursuant to N.J.A.C. 19:11-4.1 (Agreement for consent election).

The purpose of restricting intervention to specific times is to allow the representation process to reach a prompt conclusion.

Thus, whether filed in the form of a request to intervene or as a separately docketed cross-petition, we will not permit an employee organization to seek to represent the subject employees once the opportunity provided under N.J.A.C. 19:11-2.7 has passed. See Cape May Cty. Park Comm'n, D.R. No. 95-7, 20 NJPER 455 (¶25234 1994), where we dismissed a cross-petition filed for part of the negotiations unit after a consent agreement was executed in the existing larger unit. Once a consent agreement is approved or an election is directed, the scope of the negotiations unit is established, the competing organizations begin an election campaign period, and the balloting process commences. Our purpose is to ensure the employees' right to choose their negotiations representative, minimize confusion during the course of the election process, and certify the election results promptly so that the parties' relationship can be stabilized and negotiations can commence.

Here, the question concerning representation had already been raised in March 2003, when the FOP filed its representation petition in RO-2003-77. By the point that the State PBA filed its petition, RO-2004-20, in August 2003, a Consent Agreement had already been executed and approved, and the parties were in the midst of the election process.<sup>3/</sup> Therefore, I find that any

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<sup>3/</sup> An election had been conducted among the petitioned-for employees; as noted above, finalization of the outcome of  
(continued...)



cross-petition to represent the employees included in the State Law Enforcement Unit, or any part of it, once the Consent Agreement was approved on April 14 must be found untimely under N.J.A.C. 19:11-2.7 and must be dismissed. To hold otherwise would potentially allow continuous attempts to represent petitioned-for employees by organizations or groups not satisfied with the scope of the unit, the ballot choices or the election outcome.

Further, I find that to the extent New Jersey State PBA and the incumbent SLEC/PBA are the same employee organization, the PBA has waived its right to now seek a unit structure different from the existing State-wide law enforcement unit, which includes corrections officers. By signing the Consent Agreement, the PBA stipulated that the existing unit constitutes the appropriate unit for collective negotiations. Further, the Consent Agreement includes language that states that the parties have waived their rights to a hearing on any issues that could be raised in a hearing. Accordingly, the PBA is estopped from now asserting that the existing unit is no longer the most appropriate and from asking that we approve some alternative collective negotiations unit structure. See Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986); Blades Mfg. Corp., 174 NLRB 937, 939, 70

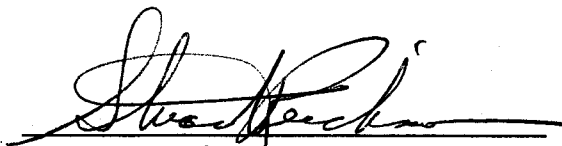
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3/ (...continued)  
that election is pending resolution of the election objections filed by SLEC/PBA.

LRRM 1111 (1969); Montgomery Ward & Co., Inc., 123 NLRB 135, 43  
LRRM 1403 (1959); The Baker and Taylor Co., 109 NLRB 245, 34 LRRM  
1324 (1954). I find that the PBA has by its conduct waived its  
right to file this petition for part of the existing State Law  
Enforcement Unit, and the petition must be dismissed.

**ORDER**

The Petition for Certification is dismissed.

  
Stuart Reichman  
Director of Representation

DATED: October 23, 2003  
Trenton, New Jersey