

D.R. NO. 2001-3

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

In the Matter of

BURLINGTON COUNTY DEPARTMENT
OF CORRECTIONS,

Public Employer,

-and-

Docket No. RO-2001-18

BURLINGTON COUNTY LAW ENFORCEMENT
OFFICERS, FOP LODGE 163,

Employee Representative,

-and-

PBA LOCAL 249,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among a unit of all full-time and part-time corrections officers and investigators employed by the Burlington County Department of Corrections. The Petitioner had refused to consent to an election, arguing that it had a right to equal access to the employer's facilities during the period leading up to the election. The Director found that the Employer's denial of access to both organizations equally, including the suspension of the contractual access granted to the incumbent, was not a basis to prevent a secret ballot election from immediately going forward.

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Appearances:

For the Public Employer
Capehart & Scatchard, attorneys
(Alan R. Schmoll, of counsel)

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

For the Intervenor
Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

DECISION AND DIRECTION OF ELECTION

On September 5 and September 21, 2000, the Burlington County Law Enforcement Officers, FOP Lodge 163 (FOP) filed a timely Petition for Certification and an amended Petition with the Public Employment Relations Commission seeking to represent all corrections officers and investigators employed by the Burlington County

Department of Corrections (County). The corrections officers and investigators are currently represented for collective negotiations by PBA Local 249 (PBA). PBA has intervened in this matter based upon its current agreement covering the petitioned-for employees. N.J.A.C. 19:11-2.7(a).

On September 25, 2000, the Commission's assigned staff agent conducted an investigatory conference with the parties in accordance with N.J.A.C. 19:11-2.2 and 2.6. The County and the PBA are willing to consent to a secret ballot election among the petitioned-for unit employees. FOP argues that it has a right to equal access to the employer's facilities during the period leading up to the election. The FOP has declined to consent to an election until we enforce that claimed right. Both employee organizations submitted written statements of position by September 28, 2000. The County did not submit a written position.

Based upon our investigation, it appears that there are no substantial and material facts in dispute which would require a hearing. N.J.A.C. 19:11-2.6. I find the following facts:

FINDINGS OF FACT

The County employs approximately 208 corrections officers and investigators at two facilities. Approximately two-thirds of the employees are assigned to work at the Burlington County Detention Center, a maximum security facility located in Mount Holly. One-third of the employees are assigned at the Work Release

Center, a minimum security facility located in Pemberton. Employees work shifts from 7:00 a.m. to 3:30 p.m., 3:00 p.m. to 11:30 p.m., and 11:00 p.m. to 7:30 a.m.

The current collective negotiations agreement between the PBA and the County, effective from January 1, 1998 through December 31, 2000, provides as follows:

Article XXIV. Rights and Privileges of the Association:

B. The Employer shall provide the Association at all facilities a locked bulletin board. The Association shall be entitled to use said locked bulletin boards for appropriate Association activities without the approval of the Employer. The Association will be allowed use of the inter-office mail system. A mail box shall be provided at Minimum and Maximum facilities. The use of the inter-office mail system shall be limited to purposes relating to Association business.

C. The Association shall have the use of County buildings at reasonable hours when appropriately scheduled through the proper authority. The association has the use of designated facilities and equipment when not in use and without cost. However, the Association will pay the actual cost of any toll calls or costs associated with copying.

The FOP contends it is legally entitled to the same access to the methods of communication to which the PBA is entitled under the collective agreement for the campaign period leading up to the election. It has not asserted that it requested the County to grant it access and the County denied such request. The incumbent PBA has indicated that it would waive all access to the bulletin board, to remove all existing letters or reference to

the PBA, and to waive access to the internal mail system during the pre-election and election periods. The County has indicated its intention not to grant any such access to either organization.

ANALYSIS

It is well settled that "during the open period, the public employer must treat competing unions equally and must grant to the challenger the same privileges it grants to the incumbent." County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983), citing In re Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976). In Union Cty, the Commission upheld, in the absence of any evidence of organizational abuse, contractual clauses which granted the incumbent union exclusive access to school bulletin boards, teacher mailboxes and certain other equipment prior to the open period. The Commission then stated, however:

Once a timely representation petition is filed or during an open period when such a petition could be filed, the interest of the individual employee in being able to freely choose their representative will outweigh the need for stability. If an incumbent is permitted the use of the employer's facilities for communication with the employees, the employer will have to make provisions to allow the challenging group access to the facilities. The potential for abuse in the exclusive use of facilities is obviously enhanced during such periods. Additionally, the requirement of strict neutrality by the employer during such periods shifts the balance against exclusivity. [Union Cty. at 53. Emphasis added.]

In this instance, the County has indicated its intention to deny access to its avenues of communication to both organizations on an equal basis, as permitted by Commission case law. See State of New Jersey, D.R. No. 83-26, 9 NJPER 290 (¶14135 1983) (State properly limited, on an equal basis, access of both incumbent and competing organization during election campaign). Thus, the access which the FOP requests will be equally unavailable to the intervenor. A claim of unequal access will only be sustained when one organization shows that it requested but was denied the access granted to another organization. Monmouth Cty., D.R. No. 92-24, 18 NJPER 201 (¶23090 1992); Monmouth Cty., D.R. No. 92-11, 18 NJPER 79 (¶23034 1992); Ocean Cty., D.R. No. 86-25, 12 NJPER 511 (¶17191 1986). Accordingly, I find that the County's denial of access to both organizations equally, including the suspension of the contractual access, is not a basis to prevent a secret ballot election from immediately going forward.

Additionally, while the Commission may consider suspending the processing of a representation petition to an election while the parties litigate alleged violations of the Act, we will only consider according such "blocking effect" where the party filing an unfair practice charge demonstrates a nexus between the alleged violation of the Act and the conduct of a free and fair election. See South Jersey Port Corp., P.E.R.C. No. 90-45, 16 NJPER 3 (¶21001 1989); Bergen Cty. College, D.R. No.

2000-8, 26 NJPER 154 (¶31059 2000). Here, while the FOP is asserting that the County has deprived it of its rights, no unfair practice charge has been filed. See Bergen Cty., 9 NJPER 451. Therefore, I find no basis to stop an election among the petitioned-for employees from going forward. Should illegal conduct occur during the election campaign period which effects the results of the election, any party may file post-election objections pursuant to N.J.A.C. 19:11-10.3(h).

There is no dispute that the petitioned-for unit, which is consistent with the existing unit, is prima facie appropriate. Accordingly, I order an election among employees in the proposed unit as follows:

Included: All full-time and part-time corrections officers and investigators employed by the Burlington County Department of Corrections.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees, and all other employees.

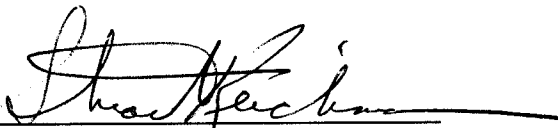
I order that a secret ballot election be conducted among the employees in the unit described above. The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, 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. 19:11-10.1, 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


Stuart Reichman, Director

DATED: October 6, 2000
Trenton, New Jersey