

D.R. NO. 91-7

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

In the Matter of

COUNTY OF MONMOUTH,

Public Employer,

-and-

F.O.P. LODGE 73,

Docket No. RO-91-3

Petitioner,

-and-

P.B.A. LOCAL 240,

Incumbent.

SYNOPSIS

The Director of Representation directs an election among all Monmouth County corrections officers. The employer refused to sign a consent agreement, contending that a unit of corrections officers represented by the FOP, while also representing superior officers, would present "conflicts of interest."

The Director determined that petitioner, FOP Lodge 73, is a separate organization from FOP Lodge 30, which represents superior officers. Furthermore, the petitioner signed a Camden-style affidavit, asserting that it and not FOP Lodge 30 shall represent all non-supervisory employees and that it admits no supervisory employees to membership. Accordingly, the Director ordered an election among corrections officers so that they could vote for the petitioner, the incumbent PBA Local 240 or no representative.

D.R. NO. 91-7

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

In the Matter of

COUNTY OF MONMOUTH,

Public Employer,

-and-

F.O.P. LODGE 73,

Docket No. RO-91-3

Petitioner,

-and-

P.B.A. LOCAL 240,

Incumbent.

Appearances:

For the Public Employer
Robert J. Hrebek, attorney

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

For the Incumbent
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND DIRECTION OF ELECTION

On July 17, 1990, the Fraternal Order of Police Lodge 73 ("FOP") filed a petition seeking certification as the exclusive majority representative of a negotiations unit of all corrections officers employed by the Monmouth County Sheriff and Monmouth County Board of Chosen Freeholders ("County"). The petition is supported by an adequate showing of interest. The current majority

representative is the Monmouth County Correction Officers Association, Inc., PBA Local 240 ("PBA"). Its intervention in this case is uncontested. See also N.J.A.C. 19:11-2.7. The County does not consent to an election, arguing that the FOP [Lodge 30] currently represents superior officers employed by the Monmouth County Sheriff and that FOP's representation of rank and file officers "would be inimical to an orderly operation of the jail and should not be permitted."

We conducted an administrative investigation in order to determine the relevant facts. See N.J.A.C. 19:11-2.2 and 2.6. On August 14, 1990, a Commission staff agent conducted an investigatory conference and solicited facts, documents and statements of position.

All parties agree that the petitioned-for unit -- all corrections officers -- is an appropriate negotiations unit. About 180-200 officers are currently employed in the unit represented by the PBA. At the conference, the FOP and PBA signed a consent agreement for an election in the petitioned-for unit, excluding superior officers and other employees. The FOP currently has an unfair practice charge (docket no. CO-90-213) pending before the Commission. It has signed a Request to Proceed, requesting the Commission to proceed with this representation matter, notwithstanding its charge. The FOP has also signed an affidavit certifying that it seeks to represent nonsupervisory employees, that if elected, it will comply with the requirement that it act as a

separate organization from any other which represents supervisory employees of the County, that it will control negotiations for and the administration of any collective negotiations agreement covering nonsupervisory employees, and as it now exists, it has no supervisory members.

FOP Lodge 30 represents about 35-40 sergeants and lieutenants. It does not have any nonsupervisory members in its bargaining unit.

The County's objection is not persuasive. In City of Camden, D.R. No. 82-25, 8 NJPER 11 (¶13005 1981), aff'd P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Commission set forth the standard required when an organization seeking to represent superior officers is affiliated with a second organization already representing rank and file police officers. The petitioning organization must certify that if selected as majority representative of superior officers, it would be a separate organizational entity apart from the organization representing a unit of rank and file officers. It must also certify that as it then existed, the petitioning organization had no nonsupervisory members and if selected, it would control the negotiations and administration and contracts concerning supervisory employees. In City of Vineland, D.R. No. 88-18, 14 NJPER 28 (¶19009 1987), the employer objected to an election because it was concerned that the supervisors would be unable to carry out their supervisory duties effectively in the future, if the same union represented the

supervisory and nonsupervisory employees. I found this to be a premature concern which would not delay the conduct of an election.

The petitioner has met certification requirements established in Camden. See also Hudson County Freeholders Board, D.R. No. 84-21, 10 NJPER 293 (¶15144 1984), lv. to app. den. App. Div. Dkt. No. AM-944-83T2 (6/7/84), lv. to app. and stay election den. S. Ct. Dkt. No. 22,796 (6/12/84). The objection raised by the County is at best speculative. Once the certification has been executed (assuming that the FOP wins the representation election and no objections to the election are sustained), the FOP structure is presumed to be legal until and unless actual conflicts are found to exist which compromise the "separateness" of the bargaining units.

Accordingly, I direct that an election be conducted in the petitioned-for unit of all corrections officers to determine whether they wish to be represented for the purpose of collective negotiations by Monmouth County Correction Officers Association, Inc. PBA Local 240, Fraternal Order of Police Lodge 73 or no representative.

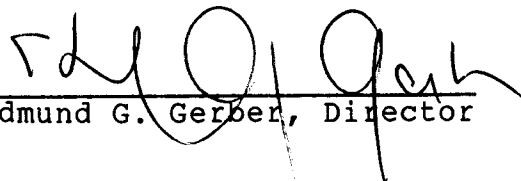
The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation 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: September 5, 1990
Trenton, New Jersey