

D.R. NO. 95-29

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

FOP LODGE 71,

Docket No. RO-95-184

Petitioner,

-and-

PBA LOCAL 153,

Intervenor.

SYNOPSIS

The Director of Representation orders an election among Essex County correction officers employed at the County Jail. The Director rejects the incumbent's argument that employees serving provisionally pending certification of a Civil Service list should be excluded from voting because they may be ineligible for permanent appointment. The Director observed that these provisional employees have traditionally been included in the unit and covered by the terms of the incumbent's contract. Further, no evidence establishes provisionals' replacement with permanent candidates to be imminent or certain.

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Appearances:

For the Public Employer
Lucille LaCosta-Davino, County Counsel

For the Petitioner
Zankowitz, Goldsmith & Sayers, attorneys
(William Sayers, of counsel)

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

DECISION AND DIRECTION OF ELECTION

On March 2, 1995, the Fraternal Order of Police Lodge No. 71 filed a timely Petition for Certification of Public Employee Representative seeking to represent an existing collective negotiations unit of Essex County correction officers assigned to the County Jail in Newark. This unit, which is currently represented by PBA Local 153, excludes correction officers assigned to the Jail Annex in Caldwell, which unit is represented

separately. Local 153 intervened in the petition based upon its contract covering the unit, which expired December 31, 1994.

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

The parties have agreed to permit the Commission to conduct an election among eligible employees to determine which organization, if any, they wish as their exclusive representative. However, the parties disagree over whether provisional employees should be permitted to vote.

The County employs about 255 correction officers at the County Jail. About 50 of the officers are employed provisionally pending civil service certification. The provisionals work side-by-side with "regular" officers and are covered by the terms of the PBA's recently expired contract.

The State Department of Personnel ("DOP") has conducted a civil service examination for correction officer candidates and has created a list of eligible candidates. However, it has not yet certified the list to the County. The County asserts that it has not been advised as to when DOP will certify the list of eligibles, but predicts that even when the list is certified, the employee selection process, which includes background investigations, medical examinations and psychological testing, will take several months. The County states that it is impossible to determine which provisional employees might eventually be selected from the list and which ones might be forced out by the appointment of a certified candidate.

The PBA contends that the provisional employees, some of whom may not retain their employment once permanent employees are appointed from the certified list, should not be eligible to vote to determine the unit's majority representative. The FOP seeks to permit all provisionals to vote. It argues that provisionals have historically been covered by the PBA's contract, so they should be entitled to vote for their negotiations representative. The FOP points out that many of the provisionals pay dues to the majority representative and some have been on the job for several years. The County takes no position on the voter eligibility of provisional employees.

We see no reason to exclude the provisional employees from the election process simply because of their provisional status. They have duties identical to those of permanent officers and share the same working conditions as permanent officers. They are covered by the terms of the contract and many pay voluntary dues deductions to the PBA.

The Commission has previously found that employees with less than permanent status (such as provisional employees, probationary employees and temporary employees) share a community of interest with other "regular" employees where they do the same work and are paid under the same provisions of the negotiations agreement. Passaic County (Preakness Hospital), D.R. No. 88-25, NJ Supp 379 (1988); Tp. of Cranford, D.R. No. 86-26, 12 NJPER 566 (¶17214 1986); Gloucester City, D.R. No. 82-12, 7 NJPER 564 (¶12251

1981); City of Bordentown, D.R. No. 81-27, 7 NJPER 120 (¶12049

1981); Tp. of Cherry Hill, P.E.R.C. No. 30 , NJPER Supp 30 (1970).

These provisional employees have traditionally been included in the unit and covered by the terms of the PBA's contract. Employees who are included in the collective negotiations agreement should be entitled to participate in the selection of the exclusive majority representative. Further, the provisionals' potential replacement with certified candidates does not appear to be imminent or certain. We have no evidence to establish with certainty that any of the provisionals will be replaced by permanent candidates from the civil service list.^{1/} Accordingly, I shall allow provisional employees to vote in the election.

Based upon the above, I hereby direct that a secret ballot election be conducted among the employees in the existing collective negotiations unit of:

Included: All correction officers employed by Essex County assigned to the County Jail in Newark.

Excluded: Correction officers assigned to facilities other than the County Jail in Newark, corrections superior officers, including captains, lieutenants, and sergeants,^{2/} non-law

^{1/} Cf., Ocean County, D.R. No. 79-25, 5 NJPER 128 (¶10076 1979), in which the Director found that employees in a transitional stage of their employment should not be permitted to vote in a representation election. There, however, the employees were definitely slated to be removed from the employer's payroll two days after the election.

^{2/} The parties agree that employees recently promoted provisionally to sergeant positions are ineligible to vote unless they are restored to corrections officer status prior to the election.

enforcement personnel, confidential employees, managerial executives, supervisors within the meaning of the Act, craft employees and professional employees.

Provisional corrections officers shall be eligible to vote in the election.

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 organizations 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: April 25, 1995
Trenton, New Jersey