

D.R. No. 2010-14

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

In the Matter of

COUNTY OF ESSEX,

Public Employer,

-and-

FRATERNAL ORDER OF POLICE,  
LODGE NO. 71,

Docket No. RO-2010-058

Petitioner,

-and-

PBA LOCAL NO. 382,

Intervenor.

SYNOPSIS

The Director of Representation orders a mail ballot election be conducted to determine the representational intent of the petitioned-for employees. The petitioner requested that the election take place in-person rather than by mail ballot. The Director determined that the Commission's mail ballot election process contains sufficient safeguards to ensure that employees are able to vote in the privacy of their homes without disrupting the workplace. Furthermore, there was no indication that the employer did not have accurate home addresses for employees, which could disenfranchise eligible voters.

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Appearances:

For the Public Employer,  
James R. Paganelli, Essex County Counsel  
(Dolores Capetola, Assistant County Counsel)

For the Petitioner,  
Fusco & Macaluso, P.A.  
(Anthony J. Fusco, Jr., of counsel)

For the Intervenor,  
Loccke, Correia, Schlager, Limsky & Bukosky  
(Richard Loccke, of counsel)

DECISION

On February 16, 2010, the Fraternal Order of Police, Lodge No. 71 (FOP) filed a representation petition, accompanied by an adequate showing of interest, seeking to represent correction officers employed by the County of Essex. The Policemen's

Benevolent Association, Local No. 382 (PBA) is the current majority representative of the County's correction officers. All parties have consented to a secret ballot election, but disagree over whether the election should be conducted by mail ballot or in-person at a designated polling place.

The FOP argues that the election should be conducted by in-person balloting at the Essex County Correctional Facility. It asserts that voters who are low-income, single, young, or divorced tend to move at above-average rates, complicating the Commission's ability to obtain correct mailing addresses for ballots. The FOP asserts that the County maintains at least three different sets of employee addresses, making it difficult to ensure that ballots will be mailed to the correct addresses. It also contends that turnout tends to be higher for in-person elections than for mail ballot elections; mail ballots can get lost in the mail; and a voter may be pressured to provide his ballot to someone else to fill out.

The FOP also contends that the costs of an in-person election are cheaper than those for a mail ballot election. It asserts that all voters would be able to cast their ballots in person between 6:00 a.m. and 8:00 a.m. or between 1:00 p.m. and 4:00 p.m. at a room inside the County's correctional facility. The FOP also asserts that an in-person election would cost the parties less in travel, since mail ballots are counted at the

Commission's Trenton office and in-person ballots would be counted at the correctional facility, and the Commission would not incur the mailing costs.

The PBA argues that a mail ballot election be conducted. It contends that voters are at a secured facility, creating a logistical problem for the employees and Commission staff. It contends that shifts vary, beginning as early as 4:30 a.m. while others end at midnight, rendering a mail ballot election as the most efficient method to conduct the election. Responding to an FOP argument, the PBA contends that employees are required to submit and maintain updated addresses with the County. The PBA also contends that a mail ballot election is preferable because it permits voters to cast their ballots anonymously and conveniently and is the best mechanism to ensure that a majority of the voters can cast their ballots.

The PBA also raises concerns about maintaining the confidentiality of the names and addresses of the voters, citing employee safety concerns, in the event that the name and address of a correction officer were inadvertently disclosed. In lieu of providing the list of voters to the FOP, the PBA requests that representatives from the PBA, FOP, and County review the list at the Commission. The FOP objects, contending that the request is inconsistent with N.J.A.C. 19:11-10.1. The County did not file a letter. The following facts appear.

The PBA is the certified representative of a negotiations unit of about 550 correction officers below the rank of sergeant employed by the County. The PBA and the County negotiated a collective agreement covering the unit, extending from January 1, 2006 through December 31, 2007. The petition is timely. The PBA was permitted to intervene in this matter based upon the collective agreement.

No party objects to a secret ballot election among the unit employees. The FOP and PBA only disagree about whether the election should be conducted in-person or by mail ballot. The County has not taken a position on the method of the election, but has provided the voters' shifts and the total number of employees working during those shifts.

Almost all 550 correction officers work at the Essex County Correctional Facility. About 25 are assigned work outside that facility. The County has three primary shifts - 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m., and 10:00 p.m. to 6:00 a.m. - with various sub-shifts within them. For example, the records department shift extends from 7:00 p.m. to 3:00 a.m., but is considered within the 10:00 p.m. to 6:00 a.m. shift. The number of employees assigned to a shift and the daily staffing for a shift vary. Every corrections officer does not work everyday. For example, 195 correction officers are assigned to the 6:00

a.m. to 2:00 p.m. shift, but only 119 correction officers work that shift each day.

ANALYSIS

N.J.S.A. 34:13A-6(d) empowers the Commission to resolve questions concerning the representation of public employees through the conduct of a secret ballot election. N.J.A.C. 19:11-10.3, Election Procedures, provides:

- (a) All elections will be by secret ballot . . . . The secret ballot may be accomplished manually or by the use of a mail ballot or by a mixed manual-mail ballot system, as determined by the Director of Representation.

Accordingly, the methodology of the election is within my discretion.

In City of Newark, D.R. No. 2007-1, 32 NJPER 262 (¶107 2006), I wrote that our mission is to conduct free and fair elections within a reasonable time and cost. When laboratory conditions for elections can be adequately met through the conduct of elections by mail, we will use that method, particularly when the financial and human resource costs to the Commission in conducting in-person elections are unjustified. Citing County of Bergen, D.R. No. 2003-9, 28 NJPER 463 (¶33170 2002), I reiterated the numerous factors which determine the election methodology:

- (1) Scattering of voters due to job duties over wide geographic area;

- (2) Scattering of voters due to significantly varying work schedules preventing presence at common location at common time;
- (3) Whether a strike, lockout, or picketing is in progress;
- (4) Desires of all the parties;
- (5) Likely ability of voters to read and understand mail ballots;
- (6) Availability and accuracy of addresses for employees;
- (7) Efficient and economic use of Commission agents and resources;
- (8) Size of the unit;
- (9) Potential disruption to employers and employees by conducting in-person elections;
- (10) Security issues for in-person elections;
- (11) Employee access to telephone and/or internet connections.

In Newark, I determined that an in-person election best served our mission. I was persuaded that the employer was unable to supply reliable home addresses because at least some employees had provided the City false or outdated home addresses in order to comply with the City's residency requirement. Inaccurate addresses would have disfranchised eligible voters because they would not have received mail ballots.

In this case, and in contrast to the facts in Newark, the petitioning employees do not all report to a single work location, and one of the parties opposes in-person voting. Shift

times also vary widely; conducting an in-person election during the periods suggested by the FOP could disenfranchise some voters who either do not work during those hours or do not work at the Essex County Correctional Facility. I am also mindful of Commission resources needed to conduct an in-person election to ensure that unit employees have the opportunity to vote.

The FOP has not provided documents or specific facts demonstrating that employee addresses are inaccurate. Nor has it explained why a mail ballot election would be unreliable. In-person voting normally poses a higher risk of election objections than mail balloting, based upon claimed employer interference or improper electioneering. New Jersey Transit, D.R. No. 2007-11, 33 NJPER 48 (¶19 2007).

We safeguard our mail ballot processes. First, we provide a Notice of Election for posting which advises eligible employees that an election is being conducted and instructs voters who do not receive ballots to call the Commission to verify or correct their addresses. Second, we accept address correction information and/or requests for duplicate ballot mailings from any party to the election up to two days before the ballots are mailed and share that information with all other parties. Third, we generally allot at least three weeks between the mailing of the ballots and the date they must be received. Finally, employee work schedules and their place(s) of employment are not



disrupted because eligible employees receive their ballots and vote in the privacy of their homes. Nor does absenteeism affect voter turnout.

N.J.A.C. 19:11-10.1 provides in a pertinent part:

(a) In all representation elections conducted pursuant to this subchapter, unless otherwise directed by the Director of Representation, the public employer is required to file simultaneously with the Director of Representation *and with the employee organization(s)* an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters and their last known mailing addresses and job titles. (Emphasis added)

An employer's refusal to provide an accurate list of unit employees to a party to an election could be considered an unfair practice. See County of Morris, P.E.R.C. No. 2003-32, 28 NJPER 456 (¶33168 2002). The FOP is entitled to a copy of the employee list.

Considering the parties' preferences and arguments in light of the facts, I am not persuaded that an in-person election is the best method for an election in this case. A free and fair election can be conducted among these employees and laboratory conditions can best be maintained through a mail-ballot procedure. Accordingly, I issue the following:

ORDER

An election is hereby directed among the employees in the following unit:

Included: All regularly employed county correction officers below the rank of sergeant employed by the County of Essex.

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

Unit employees must have been employed by the County of Essex as of March 4, 2010, 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 who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date are ineligible to vote. Employees in the unit described above shall vote to determine the collective negotiating representative, if any, for the unit in which they are employed and will have the option to vote for PBA Local 382, no representative, or FOP 71.

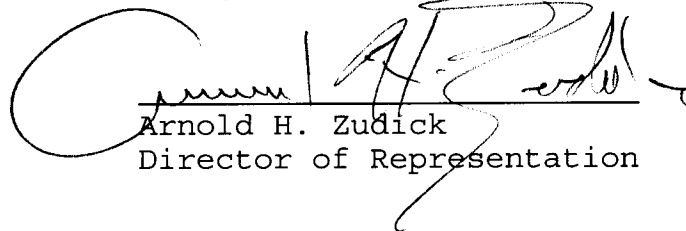
Assuming the eligibility list is received on time and barring any other complications, ballots will be mailed by the Commission to eligible voters in the unit on **April 7, 2010**. Ballots will be returned to the Commission's Post Office Box by 9:00 a.m. on **May 13, 2010**. The ballots will be counted at 10:00 a.m. at the Commission's Trenton Office.

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 list of the names of all eligible voters in the unit, 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 **March 29, 2010**. A copy of the eligibility list shall be simultaneously provided to both 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 election shall be conducted in accordance with the Commission's Rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION



Arnold H. Zudick  
Director of Representation

DATED: March 19, 2010  
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by March 29, 2010.