

D.R. NO. 2023-6

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

In the Matter of

STATE OF NEW JERSEY  
(LAW AND PUBLIC SAFETY),

Public Employer,

-and-

Docket Nos. RO-2023-001  
RO-2023-002  
RO-2023-003

PBA LOCAL 383, PBA LOCAL 383A,  
PBA LOCAL 383B,

**SYNOPSIS**

The Director of Representation issues certifications of representative, on the basis of card checks, to PBA Local 383, PBA Local 383A, and PBA Local 383B, adding to their respective state investigator units those state investigators assigned to the New Jersey Office of Homeland Security and Preparedness (OHSP). The Director determines that the state investigators at issue are not appointed by the Domestic Security Preparedness Task Force to carry out its duties, and are, thus, not deemed confidential employees pursuant to N.J.S.A. App.A:9-67, the only basis for exclusion raised by the State of New Jersey.

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Docket Nos. RO-2023-001  
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PBA LOCAL 383, PBA LOCAL 383A,  
PBA LOCAL 383B,

Petitioners.

Appearances:

For the Public Employer,  
Matthew J. Platkin, Attorney General  
(Achchana Ranasinghe, Deputy Attorney General)

For the Petitioner,  
Crivelli, Barbati and DeRose, LLC, attorneys  
(Frank Crivelli, of counsel)

**DECISION**

On July 15 and 20, 2022, respectively, representation petitions and amended petitions, supported by adequate showings of interest, were filed by Policemen's Benevolent Association (PBA) Locals 383 (Dkt. No. RO-2023-001), 383A (Dkt. No. RO-2023-002), and 383B (Dkt. No. RO-2023-003). These locals currently represent, respectively, collective negotiations units of detective state investigators, sergeant state investigators, and lieutenant state investigators employed by the State of New

Jersey in the Department of Law and Public Safety, Division of Criminal Justice (DCJ), excluding investigators with those titles currently assigned to the New Jersey Office of Homeland Security and Preparedness (OHSP). The petitioners seek to add, by way of card check, those investigators with the same titles currently assigned to OHSP to their respective units.

A telephone conference was held with the parties on August 4, 2022, during which the State raised the issue that investigators assigned to OHSP might be deemed confidential because of N.J.S.A. App.A:9-67 (L.2001, c.246, amended L.2011, c.62) and Governor Jon S. Corzine, Executive Order No. 5 (March 16, 2006), 38 N.J.R. 1623(b). The parties were given until August 8, 2022, to raise any other issues, which they did not. The State does not argue that OHSP investigators are confidential within the usual definition of confidential employees in N.J.S.A. 34:13A-3(g) of the New Jersey Employer-Employee Relations Act ("PERC Act"), N.J.S.A. 34:13A-1 et seq., nor does the State raise any other exclusionary basis.

The parties were asked to brief, with factual assertions by way of certification, the history and intent of the legislation and executive order, particularly with respect to how employees should be classified and why; the current operating structure of OHSP with respect to employees and the Domestic Security Preparedness Task Force; the role of law enforcement

investigators and the role of the task force (and whether they are distinct or similar); and who appoints the investigators and directs their investigations. We presented a proposed unit description for the parties to address in the event that Certifications of Representative were to issue in this case.

On August 22, 2022, the State filed and served its brief and a certification of OSHP Director of Administration Randy Richardson with exhibits of the Domestic Security Preparedness Taskforce (Task Force) Plan of Operations (dated October 2019), the OHSP Annual Report for the fiscal years 2020-2021, a Memorandum of Understanding (MOU) between OHSP and DCJ and an addendum signed in 2008 and 2009 respectively, and June 2022 statistics of the OHSP Operations Bureau.

On August 29, 2022, the petitioners filed a consolidated brief, a certification of Detective II-State Investigator Kylie Mattis, and a certification of attorney Frank Crivelli with exhibits he certifies to be true and correct copies of the New Jersey Civil Service Commission job specifications for the state investigators of the Department of Law and Public Safety generally and the job specifications of the state investigators of the Department of Law and Public Safety assigned to OHSP.

We conducted an administrative investigation to determine the facts. N.J.A.C. 19:11-2.2. Our review of the parties' submissions does not present substantial and material factual

issues requiring an evidentiary hearing. N.J.A.C. 19:11-2.6(f).

I find the following facts.

We first issued certifications for the units on December 8, 2010, to employee organizations not affiliated with PBA. The detective investigator unit was described as:

**Included**: All employees in the titles of Detective I -- State Investigator, Detective II -- State Investigator, Trainee -- State Investigator; and State Investigator 1, State Investigator 2, State Investigator 3, State Investigator 4 and State Investigator -- Trainee, employed by the New Jersey Department of Law and Public Safety.

**Excluded**: All managerial executives, confidential employees, supervisors within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., professional employees, craft employees, non-police employees, civilian employees, employees assigned to the Internal Affairs Unit of the New Jersey Division of Criminal Justice, all employees in the New Jersey Division of Gaming Enforcement, all employees in any petitioned-for title assigned to the New Jersey Office of Homeland Security Preparedness, and all employees contained in any other negotiations unit of the State of New Jersey.

The other units were described similarly, albeit for employees in the titles of Sergeant -- State Investigator and Lieutenant -- State Investigator and excluding non-supervisory employees. These descriptions were based on stipulations signed by the parties and not by a decision from this agency because of a dispute. Thus, the exclusion of employees in the petitioned-

for titles assigned to OHSP was due to agreement and not by any prior finding by this agency that they were confidential employees.

On December 2, 2019, we issued certifications for these units to the present petitioning organizations after the parties stipulated to the unit descriptions. The detective investigators unit was described as:

**Included**: All regularly employed detectives employed by the State of New Jersey in the Department of Law and Public Safety, Division of Criminal Justice, in the titles of Detective I - State Investigator, Detective II - State Investigator, and Detective Trainee - State Investigator.

**Excluded**: Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees; employees assigned to the Internal Affairs Unit of the New Jersey Division of Criminal Justice; employees assigned to the New Jersey Division of Gaming Enforcement, the New Jersey Racing Commission, the New Jersey State Police, or the New Jersey Office of Homeland Security and Preparedness; employees in the titles of Sergeant - State Investigator or Lieutenant - State Investigator; employees in other negotiations units; and all other employees of the State of New Jersey.

The other units were described similarly, albeit for employees in the titles of Sergeant -- State Investigator and Lieutenant -- State Investigator and excluding non-supervisory employees and the other respective units. Thus again, the exclusion of employees assigned to OHSP was due to agreement and

not by any prior finding by this agency that they were confidential employees.

In 2001, the New Jersey Legislature passed the New Jersey Domestic Security Preparedness Act (Preparedness Act), establishing the Domestic Security Preparedness Task Force (Task Force) in, but not of, the Department of Law and Public Safety. N.J.S.A. App.A:9-64 et seq. (P.L. 2001, c. 246). The Preparedness Act provided that the Task Force may appoint, in accordance with its plan of operation, such personnel, including attorneys, professionals in the field of terrorism and terrorism preparedness, disaster response, mitigation and recovery, and such other special consultants and experts as may be deemed necessary to carry out its duties, as well as such clerical and other personnel as may be appropriate and necessary. N.J.S.A. App.A:9-67. The Preparedness Act provided that all employees so appointed shall be in the unclassified service of the civil service of the State and shall be deemed confidential employees for the purposes of the PERC Act. Id. This section was amended in 2011 to expand the membership of the Task Force itself, to include the Commissioner of Banking and Insurance, and the portion related to the confidential status of personnel appointed by the Task Force remained. P.L. 2001, c. 455.

On October 3, 2002, Governor McGreevey issued Executive Order No. 33, creating an Office of Counter-Terrorism (OCT)

within the Department of Law and Public Safety. The executive order provided that the Director for Counter-Terrorism and the OCT shall, with the approval of the Attorney General, and in consultation with the Department of Personnel and the Director of the Office of Management and Budget, utilize and employ all such personnel as are necessary to carry out the duties of OCT. There is no provision in the order indicating that such personnel are to be deemed confidential under the PERC Act.

On March 16, 2006, Governor Corzine issued Executive Order #5. 38 N.J.R. 1623(b). The executive order created the Office of Homeland Security and Preparedness (OHSP) in, but not of, the Department of Law and Public Safety. It placed the Task Force in OHSP and made the Director of OHSP also the Chair of the Task Force. It provided that all staff of the Task Force were to be part of OHSP. It also separately placed the OCT in OHSP. It provided that all law enforcement investigations shall be under the supervision of the Division of Criminal Justice (DCJ) in the Office of the Attorney General. Although the executive order provides that the Director of OHSP (in consultation with the Department of Personnel and the Director of the Office of Management and Budget), shall utilize and employ all such personnel as are necessary to carry out the duties of OHSP, there is no specific provision in the order itself indicating that such personnel are to be deemed confidential under the PERC Act.



\* \* \* \* \*

The definition of "employee" under the PERC Act excludes confidential employees. N.J.S.A. 34:13A-3(d). The PERC Act itself includes a definition of confidential employee under N.J.S.A. 34:13A-3(g) that is not relevant here as the State does not argue that it is applicable. However, the New Jersey Legislature has also, through other legislation, explicitly excluded other employees from the coverage of the PERC Act, usually by having such legislation "deem" them as confidential employees within the meaning of the PERC Act. See N.J.S.A. 52:17B-100 (unclassified Division of Criminal Justice employees except state investigators); N.J.S.A. 52:17A-7 (assistant attorneys-general in the Department of Law and Public Safety); N.J.S.A. 5:12-54 (Casino Control Commission employees); N.J.S.A. 5:12-56 (Division of Gaming Enforcement employees); N.J.S.A. 11A:2-11 (Civil Service Commission employees whose principal duties relate to the enforcement or implementation of Title 11A). N.J.S.A. 52:9M-9 (State Commission of Investigation employees); N.J.S.A. 52:13H-10 (Council on Local Mandates professional employees); N.J.S.A. 52:15C-5 (Office of the State Comptroller employees).

N.J.S.A. App.A:9-67, another such statute and the one argued by the State to apply to the investigators at issue in this case, reads, in pertinent part:

a. There is established in, but not of, the Department of Law and Public Safety the Domestic Security Preparedness Task Force, which shall provide Statewide coordination and supervision of all activities related to domestic preparedness for a terrorist attack. . . . The task force shall adopt a plan of operation for the carrying out of its duties, which shall be approved by the Governor in accordance with the provisions of section 5 [C.App.A:9-68] of this act.

b. The task force may appoint, in accordance with its plan of operation, such personnel, including attorneys, professionals in the field of terrorism and terrorism preparedness, disaster response, mitigation and recovery, and such other special consultants and experts as may be deemed necessary to carry out its duties under this act, as well as such clerical and other personnel as may be appropriate and necessary. All employees appointed pursuant to this section shall be in the unclassified service of the civil service of the State and shall be deemed confidential employees for the purposes of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.).

Where employees do not fall within the meaning of such exclusionary statutes, we will not find the employees to be confidential. In Union Cty. Prosecutor's Office, D.R. No. 98-3, 23 NJPER 442 (¶28203 1997), the Director found that N.J.S.A. 52:17A-7 excluded only those deputy attorneys general in the Department of Law and Public Safety, and not those who were employed by Union County as assistant prosecutors. The PERC Act and N.J.S.A. 52:17A-7 were later amended to allow other deputy attorneys general to be in negotiations units. P.L. 2009 c. 314.

The same public law amended N.J.S.A. 52:17B-100 to specifically except state investigators of DCJ from the provision that deems other unclassified employees of DCJ to be confidential employees within the meaning of the PERC Act. P.L. 2009 c. 314.<sup>1/</sup>

Nevertheless, the State argues that state investigators assigned to OHSP are deemed confidential employees by N.J.S.A.

App.A:9-67(b) as employees of the Task Force, or as employees of OHSP, which includes within it the Task Force.<sup>2/</sup>

The MOU between OHSP and DCJ provided as an exhibit by the State makes it clear that investigators are hired and appointed by DCJ and "assigned" to the OSHP, with disciplinary determinations still made by DCJ. The MOU explains that the Attorney General appoints state investigators in DCJ, and that

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1/ Even if the state investigators at issue in this case were not unclassified employees "of" DCJ as meant by N.J.S.A. 52:17B-100, that alone would not make them confidential. Although the carve out for state investigators would not literally apply then, neither would the provision that deems unclassified employees of DCJ to be confidential employees.

2/ The petitioners interpret N.J.S.A. App.A:9-67(b) as deeming certain employees confidential specifically within the meaning of N.J.S.A. 34:13A-3(g) of the PERC Act, and that the State, by not arguing that the state investigators meet the definition of the latter, concedes they are not confidential under the former. I disagree. N.J.S.A. App.A:9-67(b), N.J.S.A. 34:13A-3(g), and the other statutes referenced above, provide separate definitions for being confidential within the meaning of the PERC Act. Applicability of either one can establish confidential employee status, even if the others are not applicable. The State does not assert that N.J.S.A. 34:13A-3(g) is applicable or that the investigators have involvement in the collective negotiations process.

the Director of DCJ selects, assigns and transfers investigators to OHSP, although the Director of OHSP can identify qualified recruits and provide their names for the hiring consideration of the Director of DCJ. OHSP reimburses DCJ for salary for investigators assigned to OHSP.

The State provided the June 2022 statistics of the OHSP Operations Bureau as an exhibit, showing that investigators are specifically assigned to the Operations Bureau of OHSP. The Operations Bureau, Analysis Bureau, and Intelligence Management Bureau are described under the "Counterterrorism" section in the OHSP Annual Report (provided as an exhibit by the State)<sup>3/</sup> and would appear to be furthering the mission of the Office of Counterterrorism (OCT), which the report explains merged with the separate staff from the Task Force when OHSP was created.<sup>4/</sup>

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3/ The State's brief implies that the OHSP Annual Report is the same as the required report of the Task Force of the Task Force's activities referenced in N.J.S.A. § App. A:9-76. Nothing in the OHSP Annual Report shows this. In any event, the Task Force reporting on the activities of various personnel does not on its own demonstrate that such personnel were "appointed" by the Task Force.

4/ The mission of OCT is focused on "identifying, deterring and detecting terrorist-related activities" and OCT is directed to "gather and disseminate intelligence for the State and local law enforcement entities and shall coordinate the counter-terrorism efforts of State and local law enforcement agencies". Governor McGreevey, Executive Order No. 33. In the executive order establishing OHSP, the section that placed OCT in OHSP also stated that the "Deputy Director of Homeland Security and Preparedness shall be responsible for counter-terrorism and intelligence and shall have as his or  
(continued...)

By contrast, the Risk Management Bureau is described under the "Preparedness" section of the report (along with the Training and Exercise Bureau and the Infrastructure Security Bureau). To the extent any employees of OHSP could be considered the attorneys, professionals, special consultants, experts, and clerical personnel appointed by the Task Force to carry out its duties as contemplated by N.J.S.A. App.A:9-67, they would seem to be the personnel of the Risk Management Bureau of OHSP. The Task Force Plan of Operations provided by the State states, "In accordance with the [Preparedness] Act and E.O. 5, the Task Force Chair may appoint staff to assist in carrying out the duties and responsibilities" of the Task Force as described in the Plan of Operations, and that the "Risk Management Bureau serves as Task Force staff." Compare N.J.S.A. App.A:9-67(b) ("The task force may appoint, in accordance with its plan of operation, such personnel . . . to carry out its duties under this act . . .").

The OHSP Annual Report explains that the Risk Management Bureau, among other duties, manages the operations of the Task Force, including risk-informed subcommittees; coordinates members

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4/ (...continued)  
her mission: (1) intelligence gathering, analysis, and sharing; (2) training of law enforcement and other individuals tasked with homeland security and emergency preparedness responsibilities; and (3) infrastructure protection." Governor Corzine, Executive Order No. 5. The same executive order provided that OHSP conduct law enforcement investigations under the supervision of DCJ. Id.

of the Task Force to develop and approve the State Homeland Security Strategy and State Unmanned Aircraft Systems Defense Strategy; and directs the Task Force in the assessment and prioritization of Homeland Security Grant Program project applications.

In general, the duties of the Risk Management Bureau are consistent with the statutory purpose of the Task Force.<sup>5/</sup> I do not determine the legal status of the Risk Management Bureau personnel in this case. However, it is clear that the other bureaus of OHSP are not part of the Task Force nor include its personnel. The investigators, who are hired and appointed by DCJ and assigned to the Operations Bureau of OHSP, are not Task Force staff.<sup>6/</sup>

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5/ The duties of the Task Force are primarily the development of proposals for a comprehensive program of domestic preparedness; coordination and resource planning to meet and address the need to prevent terrorist attacks, to mitigate their impact, and to prepare and plan for the various responses required in the event of a terrorist attack; assessing potential risks to infrastructures, financial systems, and the delivery of essential health care services; and development, implementation and management of comprehensive responses to any terrorist attack or any other technological disaster and the effective administration, management and coordination of remediation and recovery actions and responses following any such attack or disaster. N.J.S.A. App.A:9-68.

6/ While the Director of OHSP also serves as the Task Force Chair, it does not follow that all actions of the Director, including hiring staff, is done in the Director's role as Task Force Chair and to assist the Task Force in carrying out the duties and mission of the Task Force. OHSP  
(continued...)

Accordingly, investigators do not fall within the meaning of the personnel referred to by N.J.S.A. App.A:9-67(b) as "appointed" by the Task Force and are, thus, not deemed confidential employees under that statutory provision within the meaning of the PERC Act.<sup>7/</sup> None of the subsequent Executive Orders leading to the formation of OHSP explicitly deem any employees confidential within the meaning of the PERC Act, and it is doubtful that an Executive Order purporting to do that could have that effect. Legislation in the form of the PERC Act provided rights to public employees as defined by that Act, and, therefore, only subsequent specific legislation could exempt

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6/ (...continued)

encompasses more than the Task Force and has more missions than that of the Task Force. Although I find that investigators are assigned by DCJ to OHSP and not hired by OHSP, even if they were hired by the Director of OHSP, they would not be staff of the Task Force. OCT, the personnel of which were not deemed confidential by any statute, was added to OHSP along with the Task Force, clearly indicating that parts of OHSP were not considered the Task Force. Governor Corzine, Executive Order No. 5, did not purport to expand the Task Force and add OCT to it, but rather, it added both into a larger umbrella office.

7/ Other employees of OHSP are already included in negotiations units, such as certain civilian professional employees and administrative analysts. However, the prior inclusion of some OHSP employees in negotiations units does not necessarily mean that they and the state investigators could not be found to be confidential employees. My conclusion that the state investigators assigned to OHSP are not confidential employees is based on my finding that they are not Task Force employees and thus not confidential under N.J.S.A. App.A:9-67(b), the only statutory exclusionary basis raised by the State.

Executive Branch employees from the provisions of the PERC Act. N.J.S.A. App.A:9-67(b) was an example of this type of legislation, but does not apply to the investigators at issue in this case.

To the extent the State argues that the investigators work in furtherance of the plans written by the Task Force or that they share the same overall mission and that this provides a reason to find investigators to be confidential like staff directly appointed by the Task Force, N.J.S.A. App.A:9-67(b) is not written so broadly. It is for the Legislature, through specific legislation, to determine whether state investigators assigned to OHSP duties, or employees engaged in homeland security generally, should be confidential like staff appointed by the Task Force.

The State points to no other statute that would explicitly deem state investigators to be confidential within the meaning of the PERC Act, and the State does not argue that the investigators are confidential within the definition of N.J.S.A. 34:13A-3(g). Accordingly, I find that the investigators are not confidential employees.

The State does not raise any other exclusionary basis. I therefore find the units sought by the petitions (to include the OHSP state investigators) to be appropriate. The petitioners have submitted sufficient valid authorization cards for



certifications in the following units:

**Petitioner/Docket:** PBA Local 383 (RO-2023-001)

**Included:** All regularly employed detective state investigators employed by the State of New Jersey in the Department of Law and Public Safety, Division of Criminal Justice, including those assigned to the Office of Homeland Security and Preparedness.

**Excluded:** Managerial executives, confidential employees, and supervisors within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees; employees assigned to New Jersey State Police, the Division of Gaming Enforcement, the New Jersey Racing Commission, or the Internal Affairs Unit of the Division of Criminal Justice; sergeant and lieutenant state investigators; employees in other existing negotiations units; and all other employees of the State of New Jersey.

**Petitioner/Docket:** PBA Local 383A (RO-2023-002)

**Included:** All regularly employed sergeant state investigators employed by the State of New Jersey in the Department of Law and Public Safety, Division of Criminal Justice, including those assigned to the Office of Homeland Security and Preparedness.

**Excluded:** Managerial executives and confidential employees within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees; employees assigned to New Jersey State Police, the Division of Gaming Enforcement, the New Jersey Racing Commission, or the Internal Affairs Unit of the Division of Criminal Justice; nonsupervisory employees; detective and lieutenant state investigators; employees in other existing negotiations units; and all other employees of the State of New Jersey.

**Petitioner/Docket:** PBA Local 383B (RO-2023-003)

**Included:** All regularly employed lieutenant state investigators employed by the State of New Jersey in the Department of Law and Public Safety, Division of

Criminal Justice, including those assigned to the Office of Homeland Security and Preparedness.

**Excluded:** Managerial executives and confidential employees within the meaning of the Act; craft employees, professional employees, non-police employees, casual employees; employees assigned to New Jersey State Police, the Division of Gaming Enforcement, the New Jersey Racing Commission, or the Internal Affairs Unit of the Division of Criminal Justice; nonsupervisory employees; detective and sergeant state investigators; employees in other existing negotiations units; and all other employees of the State of New Jersey.

**ORDER**

I certify the petitioners as the exclusive representatives of the units described above, based upon their authorization cards.<sup>8/</sup>

/s/ Ryan M. Ottavio  
Ryan M. Ottavio  
Director of Representation

DATED: November 17, 2022  
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 November 28, 2022**

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<sup>8/</sup> The formal certifications are attached.