

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

In the Matter of

COUNTY OF SALEM,

Public Employer,

-and-

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 231,

DOCKET NO. RO-80-13

Petitioner,

-and-

SALEM COUNCIL #21, NEW JERSEY CIVIL  
SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of an administrative investigation, determines that county correction officers are policemen within the meaning of the Act and directs an election among the officers to ascertain their representational desires. The correction officers are currently included in a county-wide blue collar and white collar negotiations unit; however, the majority representative has indicated that it would no longer assert a claim to represent the correction officers if they were deemed to be police. Although the County argued that the correction officers were not police personnel, the Director notes that correction officers have been found to be police within the meaning of the Act by the court decision.

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Appearances:

For the Public Employer  
George S. Friedman, County Solicitor

For the Petitioner  
Mr. William L. Long, Jr.

For the Intervenor  
Mae L. Gandy, President

DECISION AND DIRECTION OF ELECTION

On July 31, 1979, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by Policemen's Benevolent Association, Local 231 (the "PBA") with respect to a proposed unit of all correction officers including sergeants and

lieutenants of the County of Salem (the "County"). These employees are currently represented by Salem Council #21, New Jersey Civil Service Association (the "Council") in a county-wide unit of blue collar and white collar employees. The undersigned has caused an administrative investigation to be conducted into the matters concerning the Petition in order to determine the facts. All parties have been advised of their obligations under N.J.A.C. 19:11-2.6(a) and have been afforded an opportunity thereunder to present documentary and other evidence as well as statements of position relating to the Petition.

On the basis of the administrative investigation herein, the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing that no substantial and material disputed factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b), there is no necessity for a hearing where, as here, no substantial and material factual issues have been placed in dispute by the parties.

2. The County of Salem is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), is the employer of the employees who are the subject of this Petition and is subject to the provisions of the Act.

3. Policemen's Benevolent Association, Local 231 and Salem Council #21, New Jersey Civil Service Association are employee

representatives within the meaning of the Act and are subject to its provisions.

4. The PBA seeks to represent a unit of all correction officers including sergeants and lieutenants. The PBA requests the conduct of a secret ballot election.

5. The Council currently represents the petitioned-for employees in a county-wide blue collar and white collar negotiations unit. The position of the Council is that if these employees are police, the Council waives its right to represent them. If they are not police, Council will continue to seek to represent these employees.

6. The County declines to consent to a secret ballot election. The County asserts that these employees are not police within the meaning of the Act. <sup>1/</sup>

Accordingly, the issue before the undersigned is whether county correction officers are policemen within the meaning of the Act. If correction officers are police, N.J.S.A. 34:13A-5.3 precludes their inclusion in a unit with nonpolice employees unless certain exceptional circumstances, i.e., established practice, prior agreement or special circumstances, are present.

N.J.S.A. 2A:154-4 provides:

All correction officers of the State of New Jersey who have been or who may hereafter be appointed, shall, by virtue of such appointment and in addition to any other power or authority, be empowered to act as officers

<sup>1/</sup> Neither the County nor the Council have asserted a contract bar claim pursuant to N.J.A.C. 19:11-2.8(c)

for the detection, apprehension, arrest and conviction of offenders against the law.

In In re County of Gloucester v. P.E.R.C., 197 N.J. Super. 150 (App. Div. 1969), aff'd per curiam, 55 N.J. 333 (1970), the court, relying upon N.J.S.A. 2A:154-4, found that county correction officers are policemen within the meaning of N.J.S.A. 34:13A-5.3. The court further found pursuant to §5.3 that correction officers, as police, are precluded from joining an employee organization that admits employees other than police to membership.

Therefore, consistent therewith, the undersigned determines that the county correction officers herein are police within the meaning of the Act. Since there has not been an evidentiary proffer asserting that the exceptional circumstances set forth in §5.3 are present herein, the continued inclusion of these employees in the negotiations unit represented by the Council is inappropriate.

Accordingly, there existing no substantial and material factual issues in dispute which may more appropriately be resolved after a hearing, the undersigned finds that the disposition of this matter is properly based upon the administrative investigation herein. Therefore, the undersigned finds that the appropriate unit for collective negotiations is all county correction officers employed by the County of Salem including sergeants and lieutenants, but excluding managerial executives, confidential employees, craft employees, professional employees, and supervisors within the meaning of the Act.

Pursuant to N.J.A.C. 19:11-2.6(b)(3), the undersigned directs that an election be conducted among the employees described above. The election shall be conducted no later than thirty (30) days from the date set forth below. Those eligible to vote are the employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in 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 the undersigned and with the PBA an election eligibility list consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the undersigned no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously filed with the PBA with statement of service to the undersigned. The undersigned shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by the Policemen's Benevolent Association, Local 231.

The exclusive representative, if any, shall be determined by the majority of valid ballots cast by the employees voting in the election. The election directed herein shall be conducted in accordance with the provisions of the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: October 17, 1979  
Trenton, New Jersey