

D.R. NO. 81-27

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

In the Matter of

CITY OF BORDENTOWN,

Public Employer,

-and-

Docket No. RO-81-59

ASSOCIATION OF POLICE OFFICERS
OF THE CITY OF BORDENTOWN,

Petitioner.

SYNOPSIS

The Director of Representation, resolving certain challenges as to voting eligibility, determines that "probationary" and "temporary" police officers are eligible to vote in an election among City police officers to ascertain their choice, if any, of a collective negotiations representative. The Director states that the community of interest shared by employees resides in their status as police officers; their status under Civil Service being merely one factor thereof.

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Appearances:

For the Public Employer,
Honorable Joseph Malone, III, Mayor

For the Petitioner,
Jeffrey Buchanan, Recording Secretary

DECISION

Pursuant to a Decision and Direction of Election^{1/} an election was conducted by the Public Employment Relations Commission (the "Commission") on December 23, 1980, among the sergeants and patrolmen employed by the City of Bordentown (the "City") to ascertain whether the employees desire to be represented by the Association of Police Officers of the City of Bordentown (the "Association"). The Tally of Ballots reveals that two (2) valid ballots were cast for the Association, no valid ballots were cast against the participating employee representative and three (3) ballots were challenged. The challenged ballots are determinative of the results of the election.

^{1/} In re City of Bordentown, D.R. No. 81-14, 6 NJPER 574 (¶11290 1980).

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 factual issues exist which may more appropriately be resolved at a hearing. Pursuant to N.J.A.C. 19:11-2.6(b) and 19:11-9.3(k), 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 three (3) challenged ballots were challenged by the City at the election for the following reasons:

<u>Name</u>	<u>Reason</u>
Donald Fillinger	Has not completed schooling
Jeffrey Buchanan	Has not completed schooling
Broderick Barber	Temporary employee pending Certification by Civil Service

3. By letter dated December 23, 1980, the undersigned requested the parties to submit documentary and other evidence, as well as statements of position, relating to the challenged ballots, and afforded the parties seven (7) days in which to file such documents. On December 30, 1980, the Association's submission was received by the undersigned. On the same day, the City called requesting an extension until January 9, 1981, to submit its response, not having received the undersigned's letter until December 29, 1980. That extension was granted by the undersigned. The City's statement was received on January 16, 1981.

The City claims that inasmuch as Fillinger and Buchanan are probationary employees, they should not be found to be eligible to participate in the election, and that Barber should not be found to be an eligible voter as he is a "temporary employee," "is not Civil Service Certified" and "has no right under Civil Service regulations to a permanent position in the City."

In the Decision and Direction of Election in this matter, supra, note 1, the undersigned found the appropriate unit to be "all sergeants and patrolmen employed by the City of Bordentown." (emphasis added). The community of interest shared by these individuals resides in their employment as police officers by the City. Those employees who are eligible for inclusion in the negotiations unit are also eligible to vote for or against representation. The classification of these employees under Civil Service, while a factor in the employment relationship with the City, is not the factor which controls their unit eligibility placement.

The Commission has previously determined that probationary employees have a reasonable expectation of permanent employment and are included in negotiations units with other regular employees. See In re Cherry Hill Township, P.E.R.C. No. 30 (1970). Accordingly, Fillinger and Buchanan are eligible voters and their votes may be counted. Although there is no permanent position pursuant to Civil Service classification

for a "temporary" employee, temporary employees may be continued on an employer's payroll for an indefinite period of time. Accordingly, Barber is eligible for inclusion in the unit and also an eligible voter in the election. Barber's vote shall also be counted.

Accordingly, based upon the administrative investigation above, the undersigned determines that the ballots cast by Fillinger, Buchanan and Barber are valid ballots cast by eligible voters and directs that the ballots be opened and that a revised Tally of Ballots be issued.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Carl Kurtzman, Director

DATED: February 4, 1981
Trenton, New Jersey