

P.E.R.C. NO. 2006-92

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

Docket No. RO-2006-034

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 105 OF THE NEW JERSEY STATE  
PBA,

Petitioner,

-and-

NEW JERSEY STATE CORRECTIONS ASSOCIATION  
AFFILIATED WITH THE FOP LODGE 200,

Intervenor.

SYNOPSIS

\_\_\_\_\_The Public Employment Relations Commission denies a request for review of D.R. No. 2006-18 filed by the New Jersey State Corrections Association affiliated with the FOP Lodge 200. In that decision, the Director of Representation dismissed the FOP's objections to a representation election won by the Policemen's Benevolent Association, Local 105 of the New Jersey State PBA and certified the PBA as the majority representative of law enforcement officers employed by the State of New Jersey in specified titles. The Commission finds that the FOP has not established any of the grounds for review under N.J.A.C. 19:11-8.2(a).

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Zulima V. Farber, Attorney General  
(Geri Benedetto, Deputy Attorney General, of counsel)

For the Petitioner, Zazzali, Fagella, Nowak, Kleinbaum  
& Friedman, attorneys (Robert A. Fagella, of counsel)

For the Intervenor, Joseph Carmen, attorney

DECISION

\_\_\_\_\_The New Jersey State Corrections Association affiliated with the FOP Lodge 200 requests review of a decision and order of the Director of Representation. D.R. No. 2006-18, 32 NJPER 145 (¶66 2006). That decision dismissed the FOP's objections to a representation election won by the Policemen's Benevolent

Association, Local 105 of the New Jersey State PBA and certified the PBA as the majority representative of law enforcement officers employed by the State of New Jersey in specified titles.

This case began on October 26, 2005, when the PBA filed a petition seeking to represent the law enforcement officers in a negotiations unit then represented by the FOP. The FOP intervened.

On December 2, 2005, the Director of Representation ordered a mail ballot election. D.R. No. 2006-6, 31 NJPER 389 (¶151 2005). Ballots were mailed to approximately 7,000 eligible voters on January 19, 2006 and counted on March 7. The PBA received 2,171 votes; the FOP received 1,980 votes; 13 votes were cast for "no representative"; and 131 ballots were voided. The PBA thus received a majority of the valid votes.

On March 14, 2006, the FOP filed timely election objections. The FOP alleged six problems said to require a new election.

The Director of Representation found that the FOP furnished sufficient evidence to support a prima facie case on one objection. N.J.A.C. 19:11-10.3(h) & (i). It involves an allegation that the PBA received the eligibility list required by N.J.A.C. 19:11-10.1 on December 22, 2005, while the FOP did not receive that list until January 9, 2006. The Director conducted an investigation into that objection and on May 22, 2006, issued D.R. No. 2006-18 in which he set forth his investigative

findings. 32 NJPER at 147-148. He found that the delay in the FOP's receiving the list had not disadvantaged the FOP's campaign since it had a list of employees and their home addresses by December 13, 2005, one week before the eligibility list with the same information was due. Id. at 149-152. The Director then dismissed the five other objections for the reasons set forth in his opinion and certified the PBA as the majority representative. Id. at 152-154. The Director's opinion noted that any request for review of his decision was due by June 5, 2006. The opinion was faxed and mailed to the parties.

On June 5, 2006, the FOP requested review of the Director's decision and order.<sup>1/</sup> It asserts that the investigation was inadequate; the Director accepted the State's explanations as fact while characterizing the FOP's certifications as contentions; and the Director ignored a pattern of gross negligence by the State that crippled the FOP's campaign.

On June 15, 2006, the PBA filed a response opposing review. It asserts that the Director accurately analyzed each objection and reasonably concluded that the FOP had not demonstrated misconduct warranting the setting aside of the election.

On June 15, 2006, the State filed a response opposing review. It asserts that the request for review was untimely and

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<sup>1/</sup> The FOP also requested a stay of the PBA's certification while we considered the request for review. This decision moots the request for a stay.

that the FOP had not demonstrated any of the grounds for granting review set forth in N.J.A.C. 19:11-8.2.

We find that the FOP's request for review is timely. The Director faxed the decision to the parties and noted a deadline of June 5 for filing a request for review. The FOP met that deadline.

N.J.A.C. 19:11-8.2(a) states that a request for review will be granted only for one or more of these compelling reasons:

1. A substantial question of law is raised concerning the interpretation or administration of the Act or these rules;
2. The Director of Representation's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party seeking review;
3. The conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. An important Commission rule or policy should be reconsidered.

We do not believe that any one of these grounds has been established in this case. The Director conducted an appropriate investigation into the eligibility list objection and issued a thorough and thoughtful opinion analyzing and dismissing every objection. No substantial question of law has been raised; the Director's analysis of the eligibility list issue, the major focus of the FOP's arguments, rests on sound precedent, an

accurate finding that the FOP already had employee names and addresses before the eligibility list was due, and a reasonable conclusion that the FOP did not suffer any disadvantage because of the delay in receiving the list. Nor, with respect to any of the objections, do we detect any clearly erroneous factual findings that would warrant setting aside the election results or any Commission rule or policy requiring reconsideration. Whether the election objections are viewed individually or cumulatively as alleging a pattern of gross employer negligence, we are satisfied that there is no basis or need for reviewing the Director's determination that the FOP did not precisely and specifically show conduct that warranted setting aside the election as a matter of law. N.J.A.C. 19:11-10.3(h).

ORDER

The request for review is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

ISSUED: June 29, 2006

Trenton, New Jersey