

P.E.R.C. NO. 2006-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY and
NEW JERSEY STATE CORRECTIONS
OFFICERS ASSOCIATION/FOP LODGE 200,

Respondents,

Docket No. CO-2006-084

STATE CORRECTIONS OFFICERS PBA
LOCAL 105 and NEW JERSEY STATE
PBA and INDIVIDUALS,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission grants a motion for summary judgment filed by State Corrections Officers PBA Local 105, the New Jersey State PBA and Individuals. The New Jersey State Corrections Officers Association/FOP Lodge 200 replaced PBA Local 105 as the majority representative of certain law employment officers employed by the State of New Jersey. The charging parties filed an unfair practice charge alleging that the FOP did not distribute a required annual notice to nonmembers and that therefore the FOP was not entitled to receive representation fees in lieu of dues. In granting summary judgment, the Commission finds no material facts in dispute because the FOP acknowledges that it did not distribute the required annual notice for the year beginning July 1, 2005 until after October 18, 2005. The Commission orders the FOP to return representation fees for the period July 1 to October 1, 2005 to the named charging parties and to cease and desist from collecting and distributing representation fees in lieu of dues without first distributing the required annual notice to nonmembers.

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.

P.E.R.C. NO. 2006-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY and
NEW JERSEY STATE CORRECTIONS
OFFICERS ASSOCIATION/FOP LODGE 200,

Respondents,

Docket No. CO-2006-084

STATE CORRECTIONS OFFICERS PBA
LOCAL 105 and NEW JERSEY STATE
PBA and INDIVIDUALS,

Charging Parties.

Appearances:

For the Respondent, State of New Jersey, Nancy Kaplen,
Acting Attorney General (George N. Cohen, Deputy
Attorney General)

For the Respondent, FOP, Joseph A. Carmen, P.A.,
attorney

For the Charging Parties, Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, attorneys (Robert A. Fagella, of
counsel; Colin M. Lynch, on the brief)

DECISION

This case comes to us on a motion for summary judgment filed by State Corrections Officers PBA Local 105 and the New Jersey State PBA and individual PBA members. In June 2004, New Jersey State Corrections Officers Association/FOP Lodge 200 replaced PBA Local 105 as the majority representative of certain law enforcement officers employed by the State of New Jersey. On September 23, 2005, the charging parties filed this unfair

practice charge against the State of New Jersey and the FOP. The charge alleges that the FOP did not distribute a required annual notice to nonmembers and that therefore the FOP was not entitled to receive representation fees in lieu of dues under N.J.S.A. 34:13A-5.5(a). The charging parties also sought interim relief. The interim relief matter was resolved when the FOP agreed to discontinue fee collections pending issuance of the required annual notice. This case thus involves fees collected between July 1, 2005 and October 18, 2005.

On November 30, 2005, the charging parties filed a motion for summary judgment. On December 8, the State submitted a letter taking no position on the motion. On December 20, the FOP filed a response indicating that the required notice, dated December 9, 2005, had been sent to nonmembers. On December 30, the charging parties filed a reply asserting that there remains no dispute that the notice was not in place prior to the collection of fees between July 1 and October 18, 2005.

On January 6, 2006, the Director of Unfair Practices issued a Complaint. On January 11, the Chairman referred the motion to the full Commission. N.J.A.C. 19:14-4.8.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co.

of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

N.J.A.C. 19:17-3.3 requires that an annual notice to nonmembers be distributed prior to the collection of representation fees for any dues year. There are no material facts in dispute because the FOP acknowledges that it did not distribute the required annual notice for the year beginning July 1, 2005 until after October 18, 2005. Thus, there was no lawful basis for the collection of fees during the disputed period. The FOP is incorrect in its assertion that fees deducted between July 1, 2005 and June 30, 2006 are covered by a notice to be issued after June 30, 2006. A notice based on a financial report of the FOP's expenditures for its fiscal year ending June 30, 2005 had to be distributed to all nonmembers before the commencement of fee deductions for the dues year beginning July 1, 2005. Under these circumstances, we will order the FOP to return representation fees for the period July 1 to October 18, 2005 to the named charging parties.^{1/}

ORDER

The New Jersey State Corrections Officers Association/FOP Lodge 200 is ordered to:

^{1/} In P.E.R.C. No. 2006-2, 31 NJPER 236 (¶90 2005), we held that the PBA did not have standing to seek the return of representation fees on behalf of unnamed members of the PBA.

A. Cease and desist from collecting and distributing representation fees in lieu of dues without first distributing the required annual notice to nonmembers.

B. Refund to the named charging parties the representation fees in lieu of dues collected between July 1, 2005 and October 18, 2005.

C. Post in all places where notices to unit members are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: January 26, 2006

Trenton, New Jersey

NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify negotiations unit members that:

WE WILL cease and desist from collecting and distributing representation fees in lieu of dues without first distributing the required annual notice to nonmembers.

WE WILL refund to the named charging parties the representation fees in lieu of dues collected between July 1, 2005 and October 28, 2005.

CO-2006-084

Docket No.

NEW JERSEY STATE CORRECTIONS OFFICERS
ASSOCIATION/FOP LODGE 200

Date:

By:

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372