

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5635-05T3

IN THE MATTER OF

STATE OF NEW JERSEY,

Public Employer-Respondent,

and

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

Petitioner-Respondent,

and

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

Intervenor-Appellant.

Argued July 24, 2007 - Decided August 9, 2007

Before Judges Gilroy and Lihotz.

On appeal from the Public Employment
Relations Commission, Docket
No. RO-2006-034.

Joseph A. Carmen argued the cause for
intervenor-appellant New Jersey State
Corrections Association, Affiliated with the
FOP Lodge 200.

Colin M. Lynch argued the cause for
respondent Policemen's Benevolent
Association Local 105 of the New Jersey

State PBA (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys; Robert A. Fagella, of counsel; Mr. Fagella and Colin M. Lynch, on the brief).

Geri Benedetto, Deputy Attorney General, argued the cause for respondent State of New Jersey (Stuart Rabner, Attorney General, attorney; Patrick DeAlmeida, Assistant Attorney General, of counsel; Ms. Benedetto, on the brief).

Robert E. Anderson, General Counsel, argued the cause for respondent Public Employment Relations Commission (Mr. Anderson, on the brief).

PER CURIAM

The Public Employment Relations Commission (PERC) is charged with enforcing and implementing the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to -30. PERC, through the Division of Public Employment Relations, is "empowered to resolve questions concerning representation of public employees by conducting a secret ballot election or utilizing any other appropriate and suitable method designed to ascertain the free choice of the employees." N.J.S.A. 34:13A-6(d).

On October 26, 2005, the Policemen's Benevolent Association, Local 105 (PBA) filed a petition seeking to represent certain groups of State law enforcement officers. The PBA's petition challenged the Fraternal Order of Police Lodge 200 (FOP), which then represented those same groups of officers. In response to the PBA's petition, PERC's Director of Representation (the

Director) ordered the State to provide PERC, the PBA, and the FOP with a list of the names and mailing addresses of all the employees eligible to vote in the election by December 22, 2005. The Director required a mail ballot election among all eligible voters; the ballots would be mailed on January 19, 2006 and counted on March 7, 2006.

A computer malfunction caused errors in the State's address database. As a result, the FOP's copy of the eligible voter list was misaddressed and returned to the State, as if the package had been refused. Further misunderstandings delayed the delivery of the FOP's copy of the list to its representative until January 9, 2006. However, the FOP had previously received the same information, in compact disc format, from the Governor's Office of Information Technology on December 13, 2005, and as the incumbent representative, the FOP already maintained a presence among the affected officers.

The PBA won the secret ballot mail election by 191 votes. The FOP filed six objections to the election. After review, the Director determined the FOP had stated a prima facie case only as to one objection: that the State had not timely furnished the list of names and addresses. The Director commenced investigation on that objection.

The other five objections, which the Director accordingly did not investigate, were: that the State distributed prescription cards in the Fall of 2004, which had a PBA, rather than an FOP imprint; that copies of the collective bargaining agreement dated December 14, 2005, also contained a PBA, rather than an FOP imprint; that the Department of Corrections incorrectly identified the FOP, rather than the PBA, as being involved in a change in policy regarding reciprocal days; that the PBA had engaged in electioneering on State property; and that the State had changed its policy on recruitment at the Sea Girt Police Academy when the FOP began its representation.

On May 22, 2006, the Director issued an opinion, pursuant to N.J.A.C. 19:11-10.3(h), stating that the FOP did not "precisely and specifically show[] that conduct has occurred which would warrant setting aside the election as a matter of law." Ibid. The Director further determined that, although the FOP's late receipt of the list was undisputed, the FOP had not shown it was unable to campaign effectively, or that the election process was otherwise compromised. Principally, the Director found that the FOP's prior possession of the compact disc-format list eliminated any disadvantage. The Director certified the PBA as the winner of the election, and the new representative of the officers.

On June 5, 2006, the FOP applied to PERC for a stay and a full Commission review of the Director's decision. Both the State and PBA intervened, opposing review of the Director's decision. On June 29, 2006, PERC denied the FOP's request, stating that the FOP had not proven one or more of the compelling reasons for Commission review set forth in N.J.A.C. 19:11-8.2(a), and that there was no reason to review the Director's decision. Thus, the Director's decision was affirmed. The FOP's appeal followed.

On appeal, the FOP argues that the Director's decision: (1) not to order a new election was "arbitrary, capricious, and not supported by substantial credible evidence in the record as a whole," and (2) made findings of credibility without the benefit of a hearing.

Our review of an administrative agency's determination is limited. We may not substitute our own judgment for that of the administrative agency. Flanagan v. Civil Service Dep't, 29 N.J. 1, 12 (1959). We may overturn only those decisions that are arbitrary, capricious, unreasonable; or violate legislative policies; or are unsupported by substantial credible evidence in the record. See Murray v. State Health Benefits Comm'n, 337 N.J. Super. 435, 442 (App. Div. 2001). Upon review, appellate courts must treat administrative decisions as they would any

other case without a jury, employing the standard of "whether the findings made could reasonably have been reached on sufficient credible evidence present in the record considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge of their credibility." In re Taylor, 158 N.J. 644, 656 (1999). Accordingly, our inquiry may involve only the following:

(1) whether the agency's decision offends the State or Federal Constitution;

(2) whether the agency's action violates express or implied legislative policies;

(3) whether the record contains substantial evidence to support the findings on which the agency based its action; and

(4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[Ibid.]

Based on our review of the record, we conclude that PERC's decision to affirm the Director's determination is amply supported by substantial credible evidence in the record. R. 2:11-3(e)(1)(D); see also N.J.A.C. 19:11-8.2(a). We find no merit in the FOP's contentions that the Director abused his reasonable discretion, as provided by N.J.A.C. 19:11-10.3(j), by not granting a hearing, and that he failed to conduct an appropriate investigation. The Director's detailed factual

findings set forth in his thirty-eight page decision reveals a thorough review of the voluminous record. PERC, in denying review, stated the following with which we concur:

The Director conducted an appropriate investigation into the eligibility list objection and issued a thorough and thoughtful opinion analyzing and dismissing every objection. . . . Whether the election objections are viewed individually or cumulatively as alleging a pattern of gross employer negligence, we are satisfied 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).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION