

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

In the Matter of

ATLANTIC CITY HOUSING AUTHORITY AND
URBAN REDEVELOPMENT AGENCY,

Public Employer,

-and-

Docket No. RO-77-143

TEAMSTERS LOCAL 158, affiliated with
I.B.T.,

Petitioner.

SYNOPSIS

The Director of Representation dismisses the Public Employer's post-election objections and certifies the Employee Representative as exclusive negotiations representative of employees in an appropriate unit. The Employer's objections related to the low turnout of voters at the election, and its assertion that many of the employees thought that a non-vote would be interpreted as a "no-vote" for the Employee Representative. Three out of thirteen eligible voters cast ballots in the election. All three ballots were cast for the Representative. The New Jersey Employer-Employee Relations Act mandates that an exclusive representative be chosen by a majority of employees voting in an election; and Notices of the election, stating the statutory mandate, were posted for the employees. The evidence presented did not indicate that voters did not understand the notices or that they were misled by a party seeking to benefit from misleading statements. There was, additionally, no evidence that employees did not have the opportunity to vote. After consideration of the evidence, the Director determines that the circumstances presented were not of such intolerable nature to withhold certification as required by the Act and to order that the election be set aside and rerun.

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DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to an Agreement for Consent Election, a secret ballot election was held on July 21, 1977 for employees in an appropriate unit.^{1/} The tally of ballots reveals that of approximately 13 eligible voters, three cast ballots for Teamsters Local 183, affiliated with I.B.T. There were no ballots cast against representation and there were no challenged ballots.

The Public Employer, Atlantic City Housing Authority and Urban Redevelopment Agency (the "Authority") has filed timely objections to the election. A copy of these objections, received July 26, 1977, is reprinted here in its entirety.

"On July 21, 1977, as arranged, an election was held at the Atlantic City Housing Authority, Altman Terrace Project, to decide the above reference matter. The results revealed that 13 persons were eligible to vote but only three (3) persons exercised their rights.

^{1/} As described in the Agreement for Consent Election, the appropriate negotiating unit included all Homemaker Aides and All Chore Service Aides, both Full-Time and Part-Time.

The Housing Authority wishes to go on record in challenging the outcome of the election based on the following conditions:

1. Adequate notice was given but not read nor fully understood by all eligible voters;
2. We ~~feel that three~~ (3) persons do not represent the majority of the unit which is comprised of 13 people; and
3. We have been advised by those persons who did not vote that a non-vote was a no vote for the union.

We strongly urge, based on the foregoing objections, that Teamsters Local 158, IBT not be certified by PERC.

We trust that you will give this matter your immediate attention and find in the affirmative for the Atlantic City Housing Authority, the public employer."

In accordance with the provisions of the Agreement for Consent Election which was signed by both parties and approved by the undersigned ^{2/} and in accordance with the Commission's Rules, ^{3/} the undersigned has investigated the matter contained in the objections.

By letter dated August 2, 1977, the Authority was advised that:

"Normally the undersigned will conduct an administrative investigation into your objections. However, such an investigation will not be conducted unless you have furnished sufficient evidence to support a prima facie case. Therefore, you must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred

^{2/} See Item 6 of the Agreement for Consent Election, which states, in part: "The Executive Director shall conduct an investigation of the matters contained in the objections and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged...The objecting party shall bear burden of proof regarding all matters alleged in the objections...The method of investigation of objections and challenges, including the question of whether a hearing should be held in connection therewith, shall be a final administrative determination unless the Commission shall have granted a request for review." (Emphasis added)

^{3/} N.J.A.C. 19:11-2.4 in effect at the time the objections were filed provides that: "Where objections are filed..., the Executive Director shall conduct an investigation and shall where appropriate, issue a notice of hearing.... The objecting party shall bear the burden of proof regarding all matters alleged in the objections...." It should be noted that on June 22, 1976 the Commission delegated the authorities of the Executive Director in Representation matters to the undersigned Director of Representation.

which would warrant setting aside the election as a matter of law. Since you bear the burden of proof in this matter, you are required to produce the specific evidence which you rely upon in support of the claimed irregularity in the election process. This agency will not assume the burden of seeking out such evidence. The burden of bringing such evidence forward is upon you. In accordance with the above, if you have not already done so, you are directed to submit to the assigned staff member specific evidence as outlined above within five (5) working days after receipt of this letter. Failure to submit such evidence may result in the immediate dismissal of your objections."

On August 9, 1977, the staff member assigned to this matter received a statement from the Authority containing as an enclosure a Petition signed by eight of the eligible employees. The Authority's letter states:

"The Housing Authority, in behalf of its Homemaker Aides and Chore Service Workers, has been asked to transmit the following:

1. They have advised that they did not fully understand that by not voting they would be included in the count of affirmative votes for the Union;
2. The majority of the workers in the unit do not want a union and are desirous of manifesting their position in another election - one which would be truly representative of the unit;
3. A petition, signed by eight members of the unit, setting forth clearly and concisely the reasons as cited in 1 and 2 above.

We trust that these points, coupled with the employees' petition, more than justify the setting aside of the first election and will give cause for a second election to be held. Also, the Authority, on behalf of its employees and the indicated majority, trusts that a favorable decision will be rendered in this matter."

The Petition signed by the eight employees stated: "We the members of the H.A. Social Service Program would like another chance to cast our votes against the union. We did not understand by not casting our votes that

we would be included in the union. The majority of workers do not want the union."

Based upon the following discussion and in accordance with the policy of the Commission as enunciated in the State of New Jersey, et al., P.E.R.C. No. 76 (April 28, 1973) ^{4/} the undersigned concludes that this matter may be decided upon the results of the investigation herein and that there is no necessity for convening an evidentiary hearing.

Summarizing the instant post-election objections, the Authority asserts that although adequate notice of the election was provided to employees, such notices were either not read or not fully understood by all eligible voters, that employees believed that not voting constituted a "no vote" for the Union, that the ballots cast in the election did not "represent the majority of the unit", and that a majority of employees in the proposed unit desire another election.

In evaluating such objections, which are primarily related to the low turnout of voters at the election, the undersigned is compelled to construe the statutory language embodied at N.J.S.A. § 13A-5.3 as mandating that employee representatives be selected "by the majority of the employees voting in an election conducted by the Commission...." In light of this very clear

^{4/} At page 8, the Commission stated: "The Commission does not believe that the mere claim of objectionable conduct, unsupported in the investigative stage by any evidence should thereby entitle the objecting party to a hearing, or alternatively, that a claim for which the evidence presented is found to be insufficient support for the objection, should create a right to a hearing. If there is to be protracted delay of the certification of the election's results, there should be some reasonable basis which would warrant such delay in the first instance. The Commission believes that the presentation of evidence raising substantial questions of fact is a reasonably imposed precondition to the holding of a hearing. The failure of the objecting party to satisfy such condition should permit the Commission to proceed to certify the outcome of the election." See also, Township of Stafford, E.D. No. 70 (April 14, 1975).

statutory mandate ^{5/} which makes no reference to the size of the voter turnout, it is incumbent upon the undersigned to certify the results of a secret ballot election unless it can be shown that the circumstances surrounding the election were of such intolerable nature that the election must be set aside.

There is no evidence before the undersigned that the employees did not have notice of the election. The Authority in fact has stated in its objections that notice of the election was provided to the employees. The Commission's records indicate that its standard Notice of Election, setting forth the time, date and place of the election, was forwarded to the Authority for posting in accordance with the Commission's Rules. On July 7, 1977, fourteen days prior to the date of the election, the Authority advised the Commission's election agent "we have taken the liberty of posting in plain view the Notice of Election received from your office." The Notice of Election, a copy of which is appended to this decision, clearly states in its first paragraph "A majority of the valid ballots cast will determine the results of the election." Additionally, the Notice of Election attachment contained a sample of the Commission's secret

^{5/} The language of N.J.S.A. 34:13A-5.3 in this regard is significant. This language has been contained in the Employer-Employee Relations Act since its enactment in 1968. The Supreme Court in Lullo v. International Association of Fire Fighters, 55 N.J. 409, (1970) has observed that the Act is patterned after the National Labor Relations Act. However, the parallel language of the National Labor Relations Act at Section 9(a) merely provides that representatives be selected "by the majority of the employees in a unit appropriate for such purposes." Despite the ambiguity of this language, the NLRB has rejected arguments that in a secret ballot election a majority representative must be selected by a majority of all eligible voters and arguments that a majority representative must be selected by a majority of employees voting in an election in which a majority of eligible voters have voted. Rather, the NLRB has consistently held that the majority representative is chosen by a majority of the employees casting ballots in an election. See RCA Manufacturers Co., Inc., 2 NLRB 168 (1936). The New Jersey Legislature presumably was aware of the language in the Federal Statute and chose to make clear that in the secret ballot elections mandated under the Employer-Employee Relations Act the employee representative be chosen by a majority of employees voting in the election.

ballot in which "yes" and "no" choices were available to employees. More precisely, an employee could indicate "yes" to selecting Local 158 as exclusive representative or "no". Thus, the Notice of Election made clear to employees that a representative would be chosen by a majority of valid ballots cast and the sample made clear that the employees who did not desire representation by Local 158 could vote "no". There is no probative evidence to support the Authority's allegation that the employees did not read the notices. Nor, is there any probative evidence to support the statement that these notices were not understood by employees.

Rather, the probative evidence presented in the Petition signed by the eight employees is that the signatories did not understand that "by not casting our votes that we would be included in the union." There is no evidence indicating that the source of the employees misapprehension was the election Notice. Nor is there any allegation or evidence that such misapprehension could be traced to campaign statements made by supporters of Local 158. Thus, it cannot be said that the employees not voting in the election had been misled by either the Commission's notices or by a party seeking to benefit from such statements. The evidence unmistakably points to the conclusion that the non-voting employees who signed the Petition were simply mistaken in their belief. Additionally, there is no allegation nor any probative evidence to support a claim that employees were not provided with the opportunity to inquire into the Commission's election rules. There is also no claim that employees did not have sufficient opportunity to cast ballots at the election.

Based upon the above, the undersigned cannot state that the circumstances surrounding the election were so intolerable that the election

should be set aside and rerun. The undersigned cannot, of course, fail to note that the degree of participation among eligible employees (23%) was less than that amount of participation which is consistent with election goals. The Commission encourages full participation of all eligible voters in an election by requiring sufficient notice of the election and by providing employees with a specific choice on the ballot to indicate that they do or do not want a representative. However, the undersigned cannot state that under these circumstances, in which all employees were informed of the election and supplied with Notices of the Commission's election procedures, and apparently afforded full opportunity to participate in the election, that the election was not "representative". An axiom of democratic elections is that those persons who choose not to vote acquiesce in the will of the majority.

Thus, in light of the evidence presented, the question raised before the undersigned is whether in the face of a clear and unambiguous statutory mandate, an election should be set aside where some employees have chosen to ignore Commission notices and failed to participate in an election due to their own mistaken beliefs. The undersigned cannot respond to this question in the affirmative.

Accordingly, while the undersigned is not pleased by the turnout of voters at the election, he is constrained under the present circumstances to dismiss the objections, to certify the results of the election and to issue the following Certification of Representative.

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Director of Representation in accordance with the New Jersey Employer-Employee Relations Act, as amended, and Chapter 11 of the

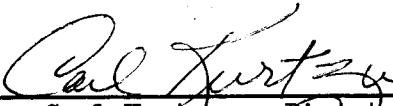
Commission's Rules and Regulations; and it appearing from the Tally of Ballots that an exclusive representative for collective negotiations has been selected;

Pursuant to authority vested in the undersigned, IT IS HEREBY CERTIFIED that

TEAMSTERS LOCAL 158, affiliated with I.B.T.

has been designated and selected by the employees of the above-named Public Employer, in the unit described below, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the said representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. Pursuant to the Act, the said representative shall be responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership; the said representative and the above-named Public Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment; when an agreement is reached it shall be embodied in writing and signed by the parties; and written policies setting forth grievance procedures shall be negotiated and shall be included in any agreement.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director
of Representation

DATED: August 26, 1977
Trenton, New Jersey



**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

NOTICE OF ELECTION

PURPOSE OF THIS ELECTION This election is to determine the representative, if any, desired by the eligible employees for purposes of collective negotiations with their employer. (See VOTING UNIT in the attachment to this Notice of Election, for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election.

SECRET BALLOT The election will be by SECRET ballot under the supervision of the Public Employment Relations Commission. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Executive Director or his agent in charge of the election.

An agent of the Commission will hand a ballot to each eligible voter at the voting place. Mark your ballot in secret in the voting booth provided. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of an agent of the Commission.

A sample of the official ballot is shown in the attachment to this Notice.

ELIGIBILITY RULES Employees eligible to vote are those described under VOTING UNIT in the attachment to this Notice of Election, including employees who did not work during the designated payroll period because they were out ill or on vacation or temporarily laid off, and also including employees in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election.

CHALLENGE OF VOTERS An agent of the Commission or an authorized observer may question the eligibility of a voter. Such challenge MUST be made before the voter has deposited his ballot in the ballot box.

AUTHORIZED OBSERVERS Each of the parties may designate an equal number of observers, this number to be determined by the Executive Director or his agent in charge of the election. These observers (a) act as checkers at the voting place and at the counting of ballots, (b) assist in the identification of voters, (c) challenge voters and ballots, and (d) otherwise assist the agent of the Commission.

INFORMATION CONCERNING ELECTION The Commission's Rules and Regulations provide that only one valid representation election may be held in a 12-month period. Any employee who desires to obtain any further information concerning the terms and conditions under which this election is to be held or who desires to raise



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE OF ELECTION
ATTACHMENT

<p>STATE OF NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION</p> <p>OFFICIAL SECRET BALLOT SAMPLE FOR CERTAIN EMPLOYEES OF</p>	
<p>Do you wish to be represented for purposes of collective negotiations by —</p>	
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>	
<p>YES</p> <p><input type="checkbox"/></p>	<p>NO</p> <p><input type="checkbox"/></p>