

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

In the Matter of

COUNTY OF ATLANTIC,

Public Employer,

-and-

LOCAL UNION 331, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF AMERICA,

DOCKET NO. RO-79-44

Petitioner,

-and-

LOCAL 2512, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO,

Intervenor.

SYNOPSIS

The Director of Representation dismisses the Intervenor's post-election objections, finding that allegations concerning the Petitioner's campaigning on the employer's premises the day before the election and campaigning in the vicinity of the polling location on the day of the election are not sufficient to warrant setting aside the election as a matter of law. The Intervenor failed to submit any evidence that the alleged conduct interfered with or tended to interfere with the free choice of voters.

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Appearances:

For the Public Employer
Albert V. Ruggiero, Personnel Director

For the Petitioner
Howard J. Casper, Esq.

For the Intervenor
Anderson Ways, President

DECISION

Pursuant to an Agreement for Consent Election, which was approved by the Director of Representation, a secret ballot election was conducted by the Public Employment Relations Commission (the "Commission") on November 9, 1978 among the employees

in the unit described below. ^{1/} The tally of ballots reveals that of approximately 173 eligible voters, 70 valid votes were cast for Teamsters Local 331, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("Teamsters"), 62 valid votes were cast for Local 2512, Council 71, American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"), and 2 valid votes were cast for neither of the participating representatives. Six votes were challenged. ^{2/}

Post-election objections to the election were timely filed by AFSCME on November 15, 1978. AFSCME's objections state "We feel that the election results are invalid as a result of electioneering by the Teamsters on the employer's premises before and during the election. In addition, representatives of the Teamsters were passing out buttons and urging people to vote for them within 10 feet of the polling place during the election."

It should be noted that an objecting party bears the burden of proof under N.J.A.C. 19:11-9.2(h) in this post-election

^{1/} "Included: All blue collar employees employed by the County of Atlantic who are currently represented by Local 2512, AFSCME. Excluded: All employees covered by any other agreement, police employees, supervisors as defined in the Act, confidential employees, craft employees and professional employees."

^{2/} The challenged ballots are determinative of the results of the election. The investigation into the challenged ballots is not an issue of this decision.

proceeding. ^{3/} On November 20, 1978, AFSCME was advised by the Director of Representation of its responsibilities pursuant to the above rule and specifically advised of its obligation to provide sufficient evidence to support its claims.

AFSCME has provided an affidavit executed by fourteen employees which refers to conduct attributed to Teamsters representatives on November 8, 1978, which was the day before the election, and on November 9, 1978. This affidavit states:

On November 8, 1978, an agent representing himself as a Vice President [sic] of Local 331, was observed handing out buttons, literature and other printed materials. This same agent was also rallying support for the upcoming election. All these activities were conducted on the employers [sic] premises.

On November 9, 1978, agents of Local 331, prior to, during and after the election were observed to be distributing buttons, pamphlets and other literature and paraphernalia. All these activities were conducted within twenty (20) feet of the polling place on the employers [sic] premises.

^{3/} N.J.A.C. 19:11-9.2(h) states, in pertinent part, "A party filing objections must furnish evidence, such as affidavits or other documentation, that precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election and shall produce the specific evidence which that party relies upon in support of the claimed irregularity in the election process."

Assuming for purposes herein the facts as asserted by AFSCME, the undersigned has carefully reviewed the objections in order to determine the alleged conduct would warrant the setting aside of the election.

The Commission has consistently applied a standard established in In re Jersey City Department of Public Works, P.E.R.C. No. 43 (1970), in evaluating post-election objections. This standard provides that elections will not be set aside unless the objecting party carries the burden of proving that there was conduct which interfered with or which reasonably tended to interfere with the employee's freedom of choice. More specifically, the Commission stated in Jersey City:

The Commission presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employee's freedom of choice. Conduct, seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election. The foregoing rule requires that there must be a direct relationship between the representation activities and the interference with freedom of choice, established by a preponderance of the evidence. 4/

The Commission, in applying its standard, has rejected objections solely based upon allegations of campaign activities

4/ The Commission's standard was explicitly approved by the Superior Court, Appellate Division. AFSCME, Local 1979 v. PERC, et al., 114 N.J. Super. 463 (App. Div. 1971).

by representatives of employee organizations on company premises during the pre-election period. In re City of Linden, E.D. No. 17 (1970). ^{5/} AFSCME's objections raise solely the issue of pre-election campaigning, which, in itself, is hardly a basis for objectionable conduct.

The Commission has also rejected post-election objections where allegations of election campaigning in the vicinity of the polling location have not been factually demonstrated and where a nexus between the electioneering and actual interference with employee free choice has not been established. See, In re Jersey City Department of Public Works, *supra*; In re County of Hudson, E.D. No. 13 (1970); and In re County of Camden, E.D. No. 9 (1970). AFSCME's objections fail to describe the content of the materials that are alleged to constitute campaign buttons, pamphlets, other literature and paraphernalia. Further, there is no evidence demonstrating or even suggesting that the alleged conduct caused apprehension, confusion, or otherwise interfered with, or tended to interfere with, employee exercise of free choice.

Accordingly, for the reasons stated above, AFSCME has failed to establish a prima facie basis for its claim that the

^{5/} In Linden, the Executive Director noted that employee visitation during working hours, although perhaps an infraction of employer work rules, is not normally the type of conduct the Commission attempts to regulate.

alleged conduct warrants setting aside the election as a matter of law and the objections shall be dismissed.

Therefore, the undersigned hereby dismisses the post-election objections filed by AFSCME.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION


Joel G. Scharff
Acting Director

DATED: January 5, 1979
Trenton, New Jersey