

E.D. NO. 55

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLIFFSIDE PARK,  
Public Employer,

-and-

Docket No. RO-870

TEAMSTERS LOCAL NO. 97 OF NEW JERSEY  
I.B.T.,  
Petitioner.

SYNOPSIS

The Executive Director overrules post-election objections filed by the Public Employer and certifies the Petitioner as majority representative. One objection is deemed to be in the nature of a challenge to voter eligibility, which the Executive Director rules may not be raised through the post-election objection procedure. Found to be without merit are the remaining objections, based solely upon the failure of certain employees to appear at the polls.

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DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to an Agreement for Consent Election, a secret ballot election was conducted on September 24, 1974 in a unit stipulated as follows: "Including: All blue collar employees in the Department of Public Works employed by the Borough of Cliffside Park. Excluding: Managerial executives, policemen, professionals, craftsmen, confidential employees, clericals, and supervisors within the meaning of the Act." On the same day the parties were furnished a Tally of Ballots which revealed that of approximately 32 eligible voters, there were 17 votes cast for Teamsters Local No. 97 of New Jersey I.B.T. (the "Teamsters") and 12 votes cast against the participating employee representative. Twenty-nine (29) valid ballots were cast and one ballot was voided.

The Borough of Cliffside Park (the "Borough") filed timely objections to the conduct of the election, set forth in their entirety as follows:

"Objection is hereby made to the conduct of the election which was held on September 24, 1974, for the employees of the Department of Public Works. The objections

are based on the following reasons, but are not necessarily limited to them:

"1. Four temporary employees of the D.P.W. who are working under a Federal Grant Program known as 'C.E.T.A.' were permitted by the Public Employees /sic/ Relations Commission to exercise a vote in this election.

"2. Brian McGuirt, a D.P.W. employee, who is on leave of absence, appeared at the D.P.W. Garage very shortly after the voting time had expired and was denied the privilege of voting.

"3. Donald Matrongelo, a D.P.W. employee, overlooked the election time and was thus unable to register his vote.

"The Employer, the Mayor and Council of the Borough of Cliffside Park, acting on behalf of the Borough of Cliffside Park feel that the degree of interest or standing of the temporary employees would not be identical to that of the permanent employees, and that the inclusion of temporary employees as qualified voters is objectionable to the Employer.

"4. Everett Royer, a D.P.W. employee was a patient at Englewood Hospital.

"The Employer feels that no determination of this election should be made until Brian McGuirt and Donald Matrongelo be permitted to register their vote. The Employer feels that it is discriminatory for it to deny regular employees the right to vote, while yet permitting temporary employees to vote."

The undersigned has caused an investigation to be conducted into the matters alleged in the foregoing objections. On the basis of such investigation the undersigned finds and determines as follows:

1. The disposition of this matter is properly based upon the administrative investigation herein, it appearing to the undersigned that no substantial and material factual issues

exist which may more appropriately be resolved after a hearing.<sup>1/</sup>

2. Objection number one concerns the propriety of four "C.E.T.A." (Comprehensive Employment and Training Act) employees casting ballots in the election. The Borough argues that "the degree of interest or standing of [these] temporary employees would not be identical to that of the permanent employees," rendering objectionable "the inclusion of temporary employees as qualified voters". This objection is directed to the voting eligibility of these employees rather than to the conduct of the election, calling into play the general rule that allegations of ineligibility are to be presented through the challenge procedure, and not through the filing of post-election objections. The issue thus presented is whether a post-election challenge may properly be filed.

The election mechanism provides that challenges are asserted at the polling place by a party's authorized observer. Paragraph 4 of the Agreement for Consent Election provides that an observer's function includes "to challenge, for good cause, the eligibility of voters." The Notices of Election forwarded to the Borough, and which the investigation reveals were posted in full view at the Borough Garage at the time of the election,

<sup>1/</sup> Paragraph 6 of the Agreement for Consent Election provides in pertinent part as follows: "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 method of investigation of objections..., including the question whether a hearing should be held in connection therewith, shall be determined by the Executive Director whose decision shall be a final administrative determination unless the Commission shall have granted a request for review." Cf., Rule Section 19:11-2.4(i).

contain the following provision:

"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."

Significantly, the Borough has presented no allegations of conduct that prevented its observer from challenging the employees in question at the time of the election.<sup>2/</sup> Furthermore, pursuant to the Agreement for Consent Election and at the consent conference held 15 days prior to the election, the Borough furnished the Commission and the Teamsters with an election eligibility list. The names of the four "C.E.T.A." employees were included on this list. The Borough thus had 15 days in which to review the eligibility list and to determine whether it intended<sup>o</sup> to challenge any voter whose name was included on the list. Not having asserted its right to challenge the "C.E.T.A." employees as they presented themselves at the polling place, when it was or should have been aware of that right, the Borough may not now do so through the post-election objection procedure.

In City of Atlantic City, E.D. No. 28 (1971), the Petitioner filed an objection to the conduct of a consent election in which it claimed it was provided with an inaccurate eligibility

<sup>2/</sup> Paragraph 6 of the Agreement for Consent Election provides in pertinent part as follows: "The objecting party shall bear the burden of proof regarding all matters alleged in the objections." Cf., Rule Section 19:11-2.4(i)

list which prevented it from making timely challenges. In language relevant to the instant objection, the hearing officer, whose findings and recommendations were adopted pro forma, stated:

"The undersigned finds that PERC was supplied with an eligibility list prior to the election and that both employee organizations received copies of this list five or six days before the election. Both organizations, therefore, had a reasonable opportunity to attempt to have the list corrected or, failing that, to challenge any voters whose eligibility was questioned. Accordingly, the objection should be overruled." 3/

The undersigned concludes that objection number one is in the nature of a post-election challenge, that the Borough had a reasonable period in which to correct the eligibility list or to challenge the "C.E.T.A." employees, and that in failing to challenge such employees at the time of the election it is precluded from doing so now. Objection number one is overruled. 4/

3. Objections two, three, and four all concern employees who failed to appear at the polls during the designated time of the election. The Borough does not assert that these employees did not have notice of the election, nor does it assert

3/ Report and Recommendations of Hearing Officer, at p. 10 (attached to and made a part of E.D. No. 28).

4/ It is interesting to note that even if timely challenges had been made, they would not have been determinative of the results of the election. Four challenged ballots would not have been sufficient in number to alter the Teamsters' majority.

that the election was not conducted during the full time period as agreed to in the Agreement for Consent Election.


Both the Agreement for Consent Election and the posted Notices of Election clearly set forth that "employees must appear in person at the polls in order to be eligible to vote." To sustain post-election objections predicated upon the failure of employees to appear at the polls during the established time would destroy the finality of the election process. Moreover, such objections are contrary to the agreement of the parties. Objections two, three and four are overruled.

Having received a majority of the valid ballots cast, the Teamsters will be certified.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Teamsters Local No. 97 of New Jersey I.B.T. has been designated and selected by a majority of the employees of the above-named Public Employer, in the unit of all blue collar employees in the Department of Public Works employed by the Borough of Cliffside Park excluding managerial executives, policemen, professionals, craftsmen, confidential employees, clericals, and supervisors within the meaning of the Act, as their representative for the purpose of collective negotiations; and that pursuant to N.J.S.A. 34:13A-1 et seq., the said organization is the exclusive representative of

all employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment.

  
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Jeffrey B. Tener  
Acting Executive Director

DATED: Trenton, New Jersey  
November 14, 1974