

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION
Public Employer

and

Docket No. RO-262

SCHOOL CAFETERIA LOCAL 131, AFL-CIO
Petitioner

and

NEW JERSEY FOOD SERVICE ASSOCIATION,
NEWARK CHAPTER

Intervenor

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to an Agreement for Consent Election a secret ballot election was conducted under the supervision of the Commission on September 30, 1971 among employees in the unit described below. ^{1/} A tally of the ballots cast was served on the parties indicating that of the approximately 500 employees eligible to vote, 204 cast votes for School Cafeteria Local 131, AFL-CIO, 68 for New Jersey Food Service Association, Newark Chapter and 14 voted against the participating employee representatives. There were 75 ballots challenged and one void ballot cast. The challenged ballots were not determinative.

Timely objections were filed by the New Jersey Food Service Association, Newark Chapter, making the following allegations:

"A great number of voters awaiting their turn to vote burst into the room set aside for voting. Once inside they created an atmosphere of intimidation by shouting, in unison, that all voters should vote for Local 131, AFL-CIO. At that time the election was suspended and voters were told, by Leo Rose, the P.E.R.C. Representative that they should leave. Many voters did leave, while most of the AFL-CIO supporters remained and voiced their dissatisfaction in a violent manner. Mr. Rose was forced, out of fear for his personal safety, to reinstate the election. Once the election was reinstated, AFL-CIO officials remained in the voting room and in fact, within 4 or 5 feet of the voting booths they spoke to the voters on line immediately before they entered the voting booths."

^{1/} The unit includes: "All cafeteria workers employed by the Newark Board of Education, Division of Cafeterias, excluding: Director and Associate Deputy Director, Managerial Executives, Professional and office clerical employees, craft employees, supervisors within the meaning of the Act and policemen.

On October 12, 1971, the Commission made a written request of the objecting party to submit all evidence in support of the objections by October 19, 1971. Sworn statements signed by attorney for the Intervenor, and several witnesses setting forth their observations relative to the above objections were received by the Commission on October 19, 1971. In addition, affidavits were submitted by all agents of the Commission who officiated at the election and a statement was received from attorney for Petitioner.

The undersigned has investigated the objections set forth above, has considered the sworn statements submitted in support thereof, has reviewed the affidavits presented and Petitioner's statement, and finds based on the uncontroverted facts:

1. Persons awaiting their turn to vote surged into the polling place in great numbers, were boisterous, unruly, and uncontrollable.
2. The disturbance in the polling place generated by this emotionally charged crowd of people created an atmosphere of confusion which, in the judgment of the Commission agents conducting the election, required its discontinuance. The abrupt termination of the election short of the appointed time for closing of the polls, together with the reigning disorder, caused an indeterminate number of presumably eligible voters to leave the premises apparently under the belief that the polls had closed and they would be unable to vote.

The foregoing events clearly indicate a denial of the opportunity to vote to some eligible voters and hence an interference with the freedom to choose or not to choose a bargaining agent. 2/ The fact that the polls were later reopened and the election resumed reduces the quantity of interference but does not excuse it as there was no evidence that those who were denied the opportunity to vote later returned to exercise their franchise. To certify a bargaining representative or the results of the instant election would ignore the fact of the election's suspension and the fact that a number of presumably eligible voters did not vote. Further, issuing a certification would permit only those employees who voted before and after the suspension to determine the election's outcome, while those who were on line to vote, but left the premises as a result of the suspension believing the polls to be closed, would be prevented from registering their choices.

Based upon the foregoing, the undersigned determines that the election of September 30, 1971 be set aside and orders the conduct of a second election in the aforesaid unit within thirty days from the date set forth below. 3/ Said election shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were

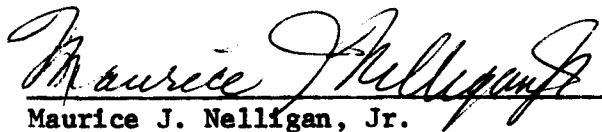
2/ All those persons leaving may not have been eligible voters; however, it is reasonable to conclude that some were.

3/ Having made this determination it is not necessary to rule on other objections filed herein.

out ill, or on vacation, or temporarily laid off, including those in 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 before the election date.

Those eligible to vote shall vote on whether or not they desire to be represented for the purpose of collective negotiations by School Cafeteria Local 131, AFL-CIO, New Jersey Food Service Association, Newark Chapter, or neither.

A majority representative shall be determined by a majority of the valid votes cast.



Maurice J. Nelligan, Jr.
Executive Director

DATED: November 19, 1971
Trenton, New Jersey