

E.D. NO. 59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY COLLEGE,
Public Employer,

-and-

Docket No. RO-829

SOMERSET COUNTY COLLEGE SECRETARIAL
AND CLERICAL FEDERATION, LOCAL 3254,
AFT, AFL-CIO,

Petitioner.

SYNOPSIS

In response to timely post-election objections, the Executive Director sets aside a representation election and directs a second election. Due to an unavoidable delay the Commission agent was unable to open the polls until two hours later than scheduled. The employee organization - which lost by a vote of 20 to 15 - objected that 8 eligible voters failed to appear at the polls due to the two-hour delay. The Executive Director rules that as a matter of law the circumstances presented do not comply with the mandate of the Act that there be an opportunity for "free choice of the employees".

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DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to an Agreement for Consent Election, a secret ballot election was conducted on October 2, 1974, in a stipulated unit of white collar employees of Somerset County College.^{1/} On the same day the parties were furnished a Tally of Ballots which revealed that of approximately 43 eligible voters, 35 valid ballots were cast, of which 15 were cast for, and 20 were cast against, Somerset County College Secretarial and Clerical Federation, Local 3254, AFT, AFL-CIO (the "Federation"). There were no void or challenged ballots.

The Federation filed timely objections to the conduct of the election and to conduct affecting the results of the

1/ The stipulated unit was as follows: "Included: Jr. Secretary, Asst. Repr. Supervisor, Library Clerk, Finance Clerk, Finance Clerk/Cashier, Secretary, Key Punch Operator, Switchboard Operator, Data Processing Asst., Sr. Clerk-Typist, Learning Center Aide, Sr. Switchboard Operator, Learning Center Asst., Media Center Asst., Mail Service Clerk, Sr. Key Punch Operator, Machine Operator employed by Somerset Co. College. Excluded: All Custodians, Spec. Serv. Asst., Security, Bldg. Serv. Worker, Maintenance Worker, Admin. Secretary, Food Helper, Computer Programmer, Asst. Food Mgr., Repro. Ctr.-Supervisor, Mail Central Stores Supr., Food Service Clerk, Admin. Asst., Pres. Secty., professional, craft, police, and supervisors within the meaning of the Act."

election, set forth in their entirety as follows:

"1. Pursuant to the Agreement for Consent Election executed on September 11, 1974, the election was to be held between the hours of 11 a.m. and 1 p.m. The election was not in fact held during the hours agreed upon in the Consent Election Agreement but, in fact, was held from 1 p.m. to 3 p.m. on the said date. As a result, some eight employees were unable or unwilling to vote in the election and that number of employees is sufficient to effect the results of the election.

"In view of the fact that the election was not held as scheduled and as posted in the Commission's Notice of Election, the election should be set aside and a new election should be ordered.

"2. The observer for the Somerset County College was a supervisory employee and her presence at the polling place coerced the employees in their free exercise of their right to vote.

"By reason of such employer interference the election should be set aside and a new election should be ordered.

"3. The Employer through acts of its agents threatened and coerced individual employees in the exercise of their right to vote.

"These threats so interfered with the conduct and results of the election that a fair result was impossible and therefore the election should be set aside and a new election should be ordered."

The undersigned has caused an investigation to be conducted into the matters alleged in the first of 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.^{2/}

2. Objection number one alleges that the election was conducted two hours later than scheduled, as a result of which 8 eligible voters - a number sufficient to have affected the results of the election - were "unable or unwilling" to vote. Investigation reveals that the election had been scheduled between the hours of 11:00 a.m. and 1:00 p.m. pursuant to the Agreement for Consent Election, and had been so noticed in the posted official Notices of Election. The Commission Agent assigned to supervise the conduct of the election was unavoidably detained and arrived at the polling place in time to conduct the election from 1:00 p.m. to 3:00 p.m., two hours later than scheduled.

The undersigned concludes that under the circumstances presented the election should be set aside and a second election conducted. Through no fault of the parties or the voters, nearly 20% of the eligible employees did not vote. The votes of the 8 employees who did not appear at the polls could very well have affected the results of the election, determined by a spread of just 5 votes. As a matter of law the undersigned is unable to

^{2/} 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).

view the circumstances of the instant election as having represented with a sufficient degree of certainty a procedure "designed to ascertain the free choice of the employees" mandated by the Act. N.J.S.A. 34:13A-6(d).

In view of the foregoing it is unnecessary either to investigate or to pass upon the remaining objections and a second election will be directed.

3. The election conducted on October 2, 1974 is hereby set aside and the undersigned directs a second secret ballot election in the aforesaid unit within thirty (30) days from the date set forth below.

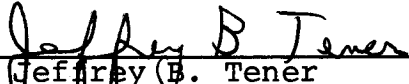
Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. The Commission requires the submission of an alphabetical list of all eligible voters along with their job titles at least seven days prior to the election. Accordingly, the public employer is hereby directed to submit such list to the Executive Director and to the employee organization which will appear on the ballot as set forth below. 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 Somerset County College Secretarial and Clerical Federation, Local 3254, AFT, AFL-CIO.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Acting Executive Director

DATED: Trenton, New Jersey
December 10, 1974