

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

In the Matter of

STATE OF NEW JERSEY,

Public Employer,

-and-

DOCKET NO. RO-83-103

UNITED PUBLIC EMPLOYEES,

Petitioner,

-and-

C.W.A. SUPERVISORS (HIGHER LEVEL),

Intervenor.

SYNOPSIS

The Director of Representation, on the basis of the administrative investigation, resolves certain challenges to ballots cast in the representation election involving the State's Higher Level Supervisors.

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Appearances:

For the Public Employer  
Frank A. Mason, Director  
(David Collins, L.R.S.)

For the Petitioner  
Fox & Fox  
(David I. Fox, Esq.)

For the Intervenor  
Steven P. Weissman, Esq.

DECISION ON CHALLENGED BALLOTS

Pursuant to a Decision and Direction of Election, <sup>1/</sup> a mail ballot representation election was conducted by the Public Employment Relations Commission ("Commission") in a unit consisting of all Higher Level Supervisors of the State of New Jersey. Ballots were cast during the period of February 28, 1983 through March 21, 1983. Employees were provided the choice of voting for CWA Supervisors

1/ D.R. No. 83-21, 9 NJPER \_\_\_\_\_ (January 31, 1983).

(Higher Level) ("CWA"), for United Public Employees ("UPE"), or for neither organization. Ballots were counted on March 21, 1983 and a tally of the ballots reveals that of the approximately 1630 eligible voters, 460 votes were cast for CWA, 354 votes were cast for UPE, and 85 votes were cast against representation. There are 56 challenged ballots.

The 56 challenged ballots are determinative of whether a majority of valid votes has been cast for CWA. If not, a runoff election between CWA and UPE would normally be indicated pursuant to N.J.A.C. 19:11-9.3. <sup>2/</sup>

An administrative investigation has commenced concerning the challenged ballots. All parties have been provided with the opportunity to submit evidentiary proffers and statements of position with respect to the challenges asserted at the tally. On the basis of the administrative investigation, determinations may be made as to the disposition of most challenged ballots.

On the basis of the administrative investigation, the undersigned finds and determines as follows:

1. Thirty-two challenged ballots were cast by individuals whose names did not appear on the employer-prepared eligibility list. These individuals received ballots from the Commission by means of a procedure whereby either UPE or CWA, or any person claiming to meet voter eligibility requirements, could request the issuance of a ballot from the Commission, notwithstanding the absence of the individual's

<sup>2/</sup> UPE has filed post-election objections which are currently being considered separately. If improper conduct did impair the election, the election results may be voided.

name from the employer-prepared eligibility list. During the balloting period all parties were advised on a regular basis of the names and addresses of these additional potentially eligible voters. Each party was requested to review the individual's asserted eligibility, to develop its position as to voter eligibility, and to state its position at the time the ballots were counted.

At the tally, UPE asserted that each of the 32 ballots was ineligible. UPE indicated that it did not possess any specific information upon which it asserted its claim of ineligibility other than the fact that the names of the voters did not appear on the employer-prepared eligibility list.

The State, at the tally, provided information to the parties indicating that 31 of the individuals were indeed unit members and met voter eligibility requirements. The State asserted that one of the voters was not a member of the Higher Level Supervisors unit. CWA maintained that the names of these individuals should have appeared on the eligibility list.

UPE was provided an additional opportunity, until March 28, 1983, to review the State's information as to the voter eligibility of the first 31 challenged votes, and to dispute such evidence. UPE was advised that in the absence of evidence disputing the State's information, the challenged ballots would be deemed to have been cast by eligible voters.

UPE has not submitted any evidence disputing the State's information as to voter eligibility concerning these 32 ballots. Rather, UPE has challenged these ballots "based upon the availability to CWA of listings other than the Excelsior list which would enable it

to request a counting of ballots for employees who were not on this list." UPE's claim may be a basis for asserting objections to the election, <sup>3/</sup> but it is not an appropriate basis to challenge voter eligibility. Accordingly, in the absence of a specific proffer disputing the evidence provided by the State which demonstrates voter eligibility, the undersigned determines that the ballots of 31 employees whose names were omitted from the employer-prepared eligibility list are valid.

The State has provided information indicating that one of the 32 not-on-list employees, Francis Follette, is a Supervising Rehabilitation Counselor. This employment title is placed in the Primary Level Supervisors negotiations unit.

CWA has not provided any evidentiary proffer disputing the State's information. As noted above, the UPE asserts that this ballot is ineligible. Insofar as there is no dispute concerning the identification of Francis Follette as a member of the Primary Level Supervisors unit and not as a member of the Higher Level Supervisors Unit, this ballot is deemed void.

2. The ballots of seven individuals whose names appeared on the eligibility list were challenged by UPE on the basis that these employees were "managerial". These employees are Vincent Kraemer, John Kups, Joseph Licari, Dorothy Megill, Mary Lynne Milek, Kathleen Morris, and Vincent Peters. Pursuant to the investigation, UPE was required to submit an evidentiary proffer in support of its challenge.

UPE states:

We reiterate the position of UPE with regard to challenges concerning eligibility based

<sup>3/</sup> UPE's objections to the election, as noted, are being reviewed separately.

upon alleged confidential or managerial status. This is applicable to UPE claims regarding certain titles including Supervising Auditor Taxation, Supervising [sic] Claims Adjudicator, Supervising Auditor, and Claims Supervisor I and II. These titles in addition may be inappropriate to the unit in question. We are unable on the short notice allowed by PERC to compile for you a comprehensive statement based upon the actual duties of the titles in question but will provide you with a statement if more time is allowed to obtain it.

UPE's assertions lack the substance necessary to support an appropriate challenge to voter eligibility. The titles occupied by the above individuals were placed in the Higher Level Supervisors Unit prior to UPE's Petition for certification and appear in the Appendix of Titles included in the Higher Level Supervisors Unit Agreement, in effect from July 1, 1981 to June 30, 1983. UPE petitioned for the existing unit and did not raise any claim throughout the processing of the Petition, until the tally, that any title was inappropriate for inclusion in the unit. UPE's submission does not specify the reason for each challenge, and it does not contain any evidentiary proffer. UPE's assertion that it is now on short notice to compile a statement is without merit. At the informal conference conducted by the Commission on December 8, 1982, UPE responded affirmatively when the assigned staff agents inquired as to whether UPE was petitioning for the existing unit as described fully in the governing collective negotiations agreement in existence on that date.

The ballots of the above seven employees are deemed valid.

3. Charles Fedorko is classified as an Engineer in Charge Maintenance 4. His name appears on the eligibility list and his employment title is a unit title. CWA challenged Fedorko's ballot and asserted that Fedorko is a confidential employee.

CWA has been advised of its responsibility to provide an evidentiary proffer to support its challenge. CWA has not submitted any evidence or statement in support of its claim.

By letter dated March 23, 1983, the State identified Charles A. Fedorko as "confidential employee/not eligible to vote." The State's position also lacks any specification or evidence to support the bald claim of confidentiality.

Inasmuch as Fedorko appears on the eligibility list, and the challenges to his eligibility lack any supporting evidence and rationale, his ballot is deemed valid.

4. Ballots cast by four Senior Occupational Therapists were challenged by the State, notwithstanding the inclusion of the names of these individuals on the State prepared eligibility list. CWA, at the tally, agreed with the State that the employment title occupied by these individuals is not currently placed in the Higher Level Supervisors Unit.

UPE has been provided the opportunity to agree with the State and CWA, or to dispute the assertion of voter ineligibility. UPE has responded that these employees are unit employees.

The evidence supporting UPE's claim consists of the listing of the Senior Occupational Therapist title in the current collective negotiations agreement. However, the State has provided additional documentation consisting of internal memoranda which appears to confirm an agreement with the incumbent majority representative, CWA, in December, 1982 to reassign the employees in the above title into the Primary Level Supervisors Unit.

The undersigned acknowledges that there is a bona fide basis for the State and CWA to assert their claims of ineligibility. These

challenges need not be resolved at the current time.

5. CWA initially challenged the eligibility of three listed voters involved in water supply because they were no longer executive branch employees on the date of the election. The challenge investigation has revealed that certain functions previously assigned within the Division of Water Resources of the Department of Environmental Protection have now been shifted to the New Jersey Water Supply Authority. Employees of the Authority are considered executive branch employees. The State confirms that this transfer does not affect negotiations unit status, and CWA now agrees.

However, the State has submitted evidence that notwithstanding the appropriate unit placement of these titles, its review of payroll records reveals that these three particular employees were terminated from State service on June 30, 1982. CWA and UPE have been provided the opportunity to refute the State's submission but have not submitted any information to the contrary. Accordingly, the ballots of Charles Wilson, Ibrahim Shaikh and Walter O'Rourke are deemed void.

6. CWA has sought to withdraw its challenge to the ballot of one Palisades Interstate Parkway employee which it had initially asserted on the basis that PIP employees were not State employees. The collective negotiations agreement includes the title Assistant Maintenance Supervisor PIP, which is the title of the employee whose ballot was challenged. His name, Fred Korring, appears on the eligibility list furnished by the State. UPE has not submitted any evidence which would dispute the placement of this title in the unit. This ballot is deemed valid.

7. Immediately after the tally of ballots, CWA sought to withdraw its challenge to the vote of Robert Aneskavich which it



initially asserted on the basis of the claim that Aneskavich had been promoted into a non-unit title. UPE, however, at the conclusion of the tally insisted on the continuation of the challenge.

The State has provided a statement indicating that Aneskavich still retains the unit title as contained on the eligibility list. CWA agrees. UPE has not submitted an evidentiary proffer disputing the State's information. This ballot is deemed valid.

8. CWA has challenged the ballots of Michael Hanlon, John Kerwick, Joseph Kosztyo, Alan Stoedter, and Kenneth Bettko, on the basis that these individuals are no longer employed in the unit. It has, however, indicated a willingness to accept the State's verification of payroll records concerning the employment status of these individuals.

The State has researched and has subsequently advised that: Hanlon was returned to a title in the primary level supervisors unit, Substance Abuse Counselor I, on October 15, 1982; Kerwick returned to a primary level supervisor title, Principal Engineer, on October 16, 1982; and Stoedter returned to a primary level supervisor title, Auditor I, on October 9, 1982. The State indicates that Bettko was promoted to Director of Division of Planning in the Department of Community Affairs on July 12, 1982 and that Kostzyo was promoted to Special Staff Officer I, Department of Defense on September 17, 1982. Neither of the above titles is listed as a higher level supervisors unit title. Rather, both titles are designated as "M" (managerial) in the Civil Service Classification Manual.

UPE has not submitted any evidence disputing the State's information. These ballots are deemed void.

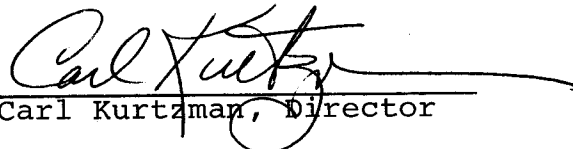
9. The State challenged the eligibility of Jean Ross, asserting that the eligibility list contained an incorrect employment

title for this employee Supervising Program Development Specialist. The State has now indicated that Ross' correct title is Administrative Analyst I, which is placed in the primary level supervisors unit. Neither CWA nor UPE has presented any evidence to the contrary. This ballot is deemed void.

10. CWA has challenged the ballot of William Schenck, asserting that his title is incorrectly set forth on the eligibility list. The State confirms that Schenck, now and during the voting eligibility period, has been placed in a tentative title, Building Management Services Specialist II, and that the negotiations unit placement of this title has not been resolved. UPE does not dispute this information. The unit placement of this title need not be resolved at this time.

On the basis of the administrative investigation, the undersigned determines, consistent with the above, that of the 56 challenged ballots, 41 ballots are valid and ten ballots are void. The above ballots shall be counted or voided, and tallied. <sup>4/</sup> A revised tally shall be prepared and issued to the parties.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: April 19, 1983  
Trenton, New Jersey

<sup>4/</sup> The remaining five challenged ballots will not be opened. Subsequent to the revised tally, if these challenges prove to be determinative of the election results, further proceedings will be required.