

H.E. No. 2008-2

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DISTRICT 1199J NUHHCE,
AFSCME, AFL-CIO,

Respondent/Majority Representative,

-and-

Docket No. CI-2006-046

PATRICK DESMOND, et al.
Charging Parties.

COUNTY OF HUDSON,
Respondent/Public Employer,

-and-

Docket No. CI-2006-047

PATRICK DESMOND, et al.
Charging Parties.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging that the County of Hudson violated 5.4a(1) and (2) of the Act when on March 22 Freeholder Dublin appeared on behalf of the incumbent 1199J at a campaign meeting run by Local 322, and when it provided transportation to a polling site for corrections employees during a April 28 run-off election. The Hearing Examiner determined that Freeholder Dublin was not the public employer its agent or representative on March 22. He acted alone and with no knowledge or acquiescence of the County or other officials. She also found that the County had a legitimate business justification for providing transportation to the polling site of the run-off election on April 28. As to charges that 1199J violated 5.4b(1) when it campaigned with Freeholder Dublin on March 22 and accepted County transportation to the poll on April 28, she recommended that the Commission dismiss the allegations concerning transportation to the poll, but find that 1199J through its agent 1199J organizer Daryn Martin violated the Act by orchestrating the appearance of Freeholder Dublin at the March 22 meeting, thus, sending a message to Local 322 supporters that the County was not neutral in the representation election.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent, Majority Representative
Oxford Cohen, attorneys
(Arnold Shep Cohen, of counsel)

For the Respondent, Public Employer
Scarinci & Hollenbeck, attorneys
(Sean Diaz, of counsel)

For the Charging Parties,
Sciarra & Catrambone, LLC, attorneys
(Matthew Curran, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On May 8 and 30, 2006, Patrick Desmond and other individual employees (Charging Parties)^{1/} filed unfair practice charges and

^{1/} Charging Parties are Patrick Desmond, John McGrath, Anthony
(continued...)

amended charges against District 1199J, NUHHCE, AFSCME, AFL-CIO (1199J or Respondent) and the County of Hudson (County or Respondent).^{2/} The charges allege, generally, that Respondents illegally collaborated before a secret ballot election conducted by the Commission on March 31 and April 28, 2006, respectively.

Specifically, under Docket Number CI-2006-047, Charging Parties allege that the County violated 5.4a(1) and (2)^{3/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when Freeholder Jeff Dublin campaigned on behalf of 1199J, the incumbent, outside a campaign meeting being conducted by Local 322, UWA, the then petitioner challenging

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- 1/ (...continued)
P. Lopez, Byron Burke, W. Smith, Thomas Baulch, Tyrone Chess, Jr., Harold Farley, Arthur Murphy, Luis Arias, Dwayne Harris, Edwin Doncell, Alfonso Morales, Matthew Ronan, Leonardo Lopez, Nick D'Adamo, Rufus Ramell, John Saar, Kenneth Colon, Sergio V. Gonzalez, J. Rafael Vazquez, Joseph Martinez, Jr., Robert Lovatt, Carlos Pelaez, Richard Yuditsky, John Pettrow, Luis A. Garces (C-4).
- 2/ The Director of Unfair Practices issued a complaint in part but refused in part to issue a Complaint on several factual allegations in both charges. County of Hudson/Desmond, D.U.P. No. 2007-4, 32 NJPER 403 (¶166 2006). I have only recited the violations and allegations on which the Director issued the Complaint. Charging Parties and Respondents requested review of D.U.P. 2007-7. On January 18, 2007, the parties were informed that their requests could not be considered by the full Commission for lack of a quorum. The requests for review are pending.
- 3/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization."

1199J's status as majority representative. The charge also alleges that the County provided illegal assistance to 1199J by providing transportation to the polls for its supporters.

Under Docket Number CI-2006-046, Charging Parties allege that 1199J violated 5.4b(1)^{4/} by campaigning with Freeholder Dublin in front of the Local 322 campaign meeting and by accepting illegal assistance when the County provided 1199J supporters transportation to the polls during the representation election.

On December 21, 2006, a Complaint and Notice of Hearing and an Order Consolidating Cases issued (C-1)^{5/}.

On January 22 and 24, 2007, the County and 1199J, respectively, filed Answers (C-2, C-3). The Respondents generally deny the allegations and raise various affirmative defenses.

A hearing was held on May 2 and 3, 2007 at which the parties examined witnesses and presented exhibits. Due to the late receipt of transcripts, I granted the County's requests with the consent of the other parties for extensions to file briefs.

^{4/} This provision prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

^{5/} "C" refers to Commission exhibits received into evidence at the hearing. "RU" refers to Respondent 1199J exhibits. Exhibits RU-1 and RU-2 were marked for identification only. There were no exhibits submitted by the County or Charging Parties. Transcript references to the two hearing dates are "1T" and "2T" respectively.

Briefs and replies were filed by September 24, 2007. Based on the record, I make the following:

FINDINGS OF FACT

Background

1. The County of Hudson is a public employer, District 1199J is a public employee representative, and Charging Parties are public employees within the meaning of the Act (1T9-1T10).

2. Since the 1970's, 1199J has represented a broad-based unit of non-supervisory blue-collar and white-collar employees employed by Hudson County (2T44).

3. I take administrative notice of the following facts:

On February 10, 2006, United Workers of America Local 322 (Local 322) filed a representation petition (RO-2006-059) seeking an election among the employees represented by 1199J. On March 31 and April 28, 2006, respectively, the Commission conducted a secret ballot representation election and a run-off election.

After the March 31 election, 1199J filed objections to the election. No objections to the election were filed by Local 322. On April 12, 2006, as part of a settlement regarding the counting of challenged ballots, 1199J withdrew its objections. The Revised Tally of Ballots^{6/} for the March 31 election certifies that there were approximately 656 eligible voters; 184 votes were cast for Local 322, 175 votes were cast for 1199J, and 11 votes were cast for no representative. No ballot choice received a

^{6/} The Tally was revised after the parties agreed to count 5 challenged ballots.

majority of valid votes cast, therefore, a run-off election was conducted between 1199J and Local 322.

The Tally of Ballots for the April 28 run-off election certifies that there were approximately 650 eligible voters; 175 votes were cast for Local 322, while 233 votes were cast for 1199J. There were 6 challenged ballots, but they were not sufficient in number to affect the results of the election.

On May 4, 2006, Local 322 filed objections to the April 28 election. Among the objections were the following:

On April 28, 2006, the County provided Local 1199J supporters who work at the County Jail access to county vehicles without providing supporters of Local 322 the same access at that facility and others.

Since on or about April 15, 2006, Jeff Dublin a Hudson County Freeholder openly campaigned in the Road and other Departments for support for 1199J.

On May 15, 2006, Local 322, UWA National President Stephen Sombrotto withdrew Local 322's objections to the election. On May 16, 2006, 1199J was certified as exclusive representative of all blue collar and white collar employees employed by Hudson County.

4. Patrick Desmond holds the title of senior road inspector and has worked for Hudson County for five years (1T29). Beginning in November 2005, Desmond was a supporter and organizer for Local 322 during the recent campaign which resulted in the elections in March and April 2006 (1T29, 1T31).

I take administrative notice that:

Prior to the March 31 election, a dispute arose between Patrick Desmond and National UWA President Stephen Sombrotto over who represented Local 322. On March 30, 2006, the Commission denied Desmond's request for review of a Director's decision addressing this dispute and for a stay of the March 31 election. The Commission found that the Director properly executed his authority in determining that the representation petition was supported by a valid showing of interest not subject to collateral attack, and that any factual dispute that arose after the Consent Agreement was signed was an internal union matter that did not have to be resolved before an election. Hudson Cty., P.E.R.C. No. 2006-76, 32 NJPER 101 (¶49 2006).

After the March 31 election, Desmond continued his efforts to have the election set aside on the grounds that the voters were confused over who represented Local 322. In correspondence dated April 11, 2006, the Director reiterated that Desmond was not a party nor did he represent a party in the representation proceeding and had no standing to file objections to the election.

5. I also take administrative notice that in 1976, the County of Hudson adopted a county executive form of government pursuant to New Jersey's Optional County Charter Act, N.J.S.A. 40:41A-1 et seq. Under this form of government, the governing body consists of the elected county executive and the elected board of freeholders. The number of freeholders varies by county, but Hudson County has nine freeholders.

Under the Charter Act, there is a separation of powers between the county executive and the board of freeholders. The county executive exercises all administrative or executive functions for the county, while the board of freeholders exercises all legislative and investigative functions. N.J.S.A. 40:41A-32. The county executive has the authority to set salaries of county administrative and executive personnel. The county executive also has the power to negotiate and sign contracts on behalf of the county and prepare annual operating and capital budgets. N.J.S.A. 40:41A-36. The freeholders have the authority to approve annual operating and capital budgets. N.J.S.A. 40:41A-41. The board of freeholders deals with county employees only through the officials responsible for the overall executive management of the county's affairs, namely, the county executive. N.J.S.A. 40:41A-86. See also, Prunetti v. Mercer County Bd. of Chosen Freeholders, 350 N.J. Super. 72 (App. Div. 2001).

6. Jeff Dublin is a Hudson County Freeholder and has held that office since 2004 (1T249). He is paid by Hudson County for his elected, part-time position as freeholder, but is not involved in the day-to-day administration of the County (1T284).

Since becoming a freeholder in 2004, Dublin has been employed by the City of Jersey City as an assistant director at a community center (1T249, 1T267-1T268). Also, since 2004, Dublin has been a member of the Moose Lodge in Jersey City (1T250). Previously, from 1990 until his election as a freeholder, Dublin

worked for Hudson County as a supervisor in the road department and was a member of 1199J (1T276, 1T282). 1199J contributed to Dublin's campaign for freeholder (1T282).

The March 22, 2006 Meeting at the Moose Lodge

A. Dublin's Breakfast Meeting with Martin

7. On March 22, 2006, Dublin had a breakfast meeting, a common occurrence, with his chief of staff, Daryn Martin, one of Dublin's 13 aides. Martin is responsible for the day-to-day operations of Dublin's office and, as Dublin's aide, is unpaid. Martin is also employed by 1199J as a paid administrative organizer. During the election campaign between 1199J and Local 322, Martin was responsible for talking to employees and encouraging them to vote for 1199J.

8. At the breakfast meeting, Martin told Dublin he was preparing a letter for one of Dublin's constituents regarding a non-profit community organization (Acorn) that Dublin and Martin were both involved in - Martin was president and Dublin was vice-president of Acorn. Although Dublin did not have to sign the letter, Martin told Dublin that he (Dublin) could pick up the letter that night at the Moose Lodge. Martin planned to be at the Moose Lodge with 1199J supporters to observe the turnout of those attending a Local 322 campaign meeting and to talk to the attendees "on the public sidewalk to see how they felt about it

[the Local 322 meeting]" (1T252, 1T264-1T266, 1T269, 2T67-2T70, 2T88).^{2/}

It is unclear from the record whether Martin actually communicated to Dublin the specific reason that he (Martin) was going to be at the Moose Lodge that night. I infer, however, that he did. Martin was not a member of the Moose Lodge and would have no specific need to be at the Lodge, but for his organizational activities on behalf of 1199J and the Local 322 meeting. Dublin, although a member of the Lodge, articulated no reason or intention to be at the Lodge that night other than to retrieve the letter. Therefore, it seems logical that Dublin would have asked or Martin would have volunteered the reason that he (Martin) was going to be at the Moose Lodge that night.

In any event, picking up the letter from Martin, was the ostensible reason that Dublin and Martin say that Dublin went to the Moose Lodge the evening of March 22; no one from Hudson County government, including Personnel Director Patrick Sheil, directed Dublin to go to the Lodge that night or knew about his intention to do so (1T251).

^{2/} In describing his activities at the Moose Lodge on March 22, Martin also testified that he was only there observing, not getting into discussions with those entering the lodge (2T80, 2T82, 2T85). I credit his original testimony that he engaged in conversation with those attending the meeting at the Moose Lodge, because as an organizer for 1199J, Martin had a vested interest in persuading voters to support 1199J. To that end, he was doing more than observing.

B. Campaigning by 1199J Supporters Outside the Moose Lodge

9. Around 7:30 p.m. on March 22, 2006, Local 322 conducted a meeting at the Moose Lodge in Jersey City which was scheduled and run by Desmond to encourage support for Local 322 in the up-coming March 31, 2006 secret ballot election (1T31, 1T47, 1T52, 2T70). Between 40 and 75 County employees attended the meeting (1T32, 1T144, 1T158). The meeting lasted about an hour (1T47, 1T49).

10. At approximately 6:30 p.m., Desmond arrived at the Moose Lodge with Mark Meyers to set up for the meeting (1T52-1T53). Meyers works for the County as a supervisor of maintenance repairs in Secaucus and is also a confidential aide for Director Demlee of the County (1T147-1T148). The record does not reflect to any greater specificity what responsibilities or authority Demlee holds.

Meyers was not eligible to vote in the representation election, but attended the meeting that night, at least in part, because he is a member of the Moose Lodge. In order for Local 322 to rent the Lodge space, it was necessary for a member to take responsibility for the usage (1T148-1T149, 1T155-1T156, 1T168). I infer that Meyer's assumed that responsibility for Local 322.

11. When Desmond and Meyers arrived, Margaret Ebel, an 1199J organizer, and another woman were across the street from the Moose Lodge (1T52-1T53, 1T57). Desmond waived to Ebel who waived back and said "Hi". Desmond and Meyers then went inside

to set up for the meeting (1T57). While the two were inside the Lodge, other 1199J supporters wearing 1199J shirts gathered on the street outside the entrance to the driveway of the Lodge (1T32, 1T53).

12. A short time later, Meyers heard noises outside the Lodge and went to investigate. He observed six or seven 1199J supporters handing out literature and putting flyers on cars in the parking lot next to the Lodge (1T149, 1T159-1T160, 1T164-1T165). For the first time that night, Meyers noticed Dublin, who he recognized as a freeholder, standing with Martin, next to the 1199J supporters (1T151, 1T160-1T161).

13. When Meyers spotted Dublin, they were standing approximately 15 feet apart. Meyers saw a flyer on his own car and observed Dublin with, what he assumed, were 1199J flyers in his hands, although he was too far away to actually read what was on the papers in Dublin's hands and never actually saw Dublin put flyers on anyone's car (1T152, 1T162-1T163, 1T188).

Meyers went back into the Lodge and told some individuals, including Desmond and Local 322 organizer, Alfonso Morales, who is employed by the County as a truck driver, that the 1199J supporters were blocking the driveway leading to the Lodge (1T149-1T150). Desmond and Morales proceeded outside to check out the situation (1T150, 1T167, 1T169).

14. Desmond saw 1199J supporters near the entrance to the driveway beside the Moose Lodge basically blocking the driveway to the parking lot (1T53, 1T55-1T57). The mere presence of the

1199J supporters did not bother Desmond, but he was concerned that they were blocking the driveway and trying to stop people from coming to the meeting (1T63, 1T68, 1T80).

At this point, Desmond noticed Dublin and Martin, walking together (1T60). Desmond greeted Dublin and shook his hand, but did not ask him why he was there or who invited him (1T60). Desmond later learned that Dublin was a member of the Moose Lodge (1T60-1T61).

15. Desmond also observed the 1199J supporters handing out flyers which contained promises of better wages and encouraging those entering the Lodge to support 1199J (1T33, 1T46, 1T64). According to Desmond, there was nothing on the flyers that suggested they were prepared by the County nor did they contain any promises or claims by the County (1T81).

16. Several others also observed 1199J supporters distributing campaign literature. For instance, Joseph Pilla, a County employee married to a Local 322 supporter, and Morales saw the 1199J supporters with campaign flyers which they put on cars in the parking lot (1T119, 1T193, 1T203, 1T216). Additionally, Charging Party Anthony Lopez, a Local 322 organizer, who is employed by Hudson County as a senior road inspector, observed Ebel and 1199J supporter Eric Griffith that night in the parking lot with 1199J literature in their hands, but did not see them putting the leaflets on the windshields of cars in the parking lot (1T84, 1T95). Alfonso Morales, also noticed 1199J flyers on cars in the parking lot, including on his own personal car.

17. Martin denied that any 1199J supporters, including himself, had 1199J campaign literature which was distributed to anyone or put on cars in the parking lot that night (2T77). Martin did admit that it is common practice for 1199J to distribute literature, but when asked on cross examination whether 1199J distributes literature for an election, at first he said no (2T90). However, upon being shown documents to refresh his recollection, he admitted that 1199J might have distributed literature in support of 1199J in the March 31 election; such campaign literature might have been mailed to members or handed out. Martin was not sure if 1199J commonly puts such literature on cars (2T92).

I do not credit Martin's statements that neither he nor any 1199J supporters possessed or distributed 1199J literature that night. I find that 1199J campaign literature was being handed out and put on car windshields in the parking lot. Several witnesses testified credibly to this effect, including Desmond, Meyers, Pilla, Morales and Lopez. Also, Martin, Ebel and others went to the Lodge that night specifically to observe and talk to those attending the meeting to persuade them to support 1199J. Passing out literature in support of 1199J would have been a natural outgrowth of that activity. Finally, I draw a negative inference from 1199J's failure to call Ebel, as a key 1199J organizer, or any other 1199J supporter present that night to corroborate Martin's testimony in this matter. State v. Clawans, 38 N.J. 162, 170-171.

18. As to Dublin's campaigning for 1199J by passing out their flyers or other literature, Desmond testified that he observed Dublin handing out 1199J flyers and putting them on the windshield of cars in the parking lot (1T33, 1T80). Dublin denied doing so (1T262-1T263). Martin also denied that Dublin had any literature that night (2T76-2T77). Other witnesses - Meyers, Pilla, Anthony Lopez and Morales - observed Dublin with papers in his hands but could not read or see what was written on the papers nor did they see Dublin doing anything with the papers. They assumed that the papers were 1199J literature and that Dublin was there campaigning for 1199J (1T85-1T87, 1T91, 1T95, 1T97, 1T120, 1T130-1T131, 1T152, 1T162-1T163, 1T188, 1T219, 1T221-1T223). Their assumptions, however, do not corroborate Desmond's testimony that Dublin was in possession of and passing out 1199J literature. I, therefore, cannot find that Dublin was handing out 1199J campaign literature or putting such literature on cars in the parking lot.

C. Confrontations Between 1199J and Local 322 Supporters

Before the Local 322 meeting began, there were several verbal confrontations between the various union supporters outside the Moose Lodge. Witness accounts varied, especially the accounts of a confrontation between Alfonso Morales and Dublin. I do not find that the variations in witness accounts material to my decision. The evidence supports that several shouting matches took place growing out of tensions between the opposing unions and, specifically, out of concerns by Local 322 organizers that

1199J supporters were blocking ingress to the meeting, thus, preventing attendees from entering the Lodge. Emotions were running high on both sides.

Jersey City police arrived in response to a call from a Local 322 supporter because of the concern that the entrance to the Lodge was blocked. The police briefly interviewed various witnesses to the confrontations and left with no one filing charges or being charged as a result of the confrontations. I have summarized the witness descriptions of these events below.

19. Pilla recalled only one confrontation that night - an argument between himself and Martin (1T125).

Pilla attended the March 22 meeting at the Moose Lodge with his wife, a Local 322 supporter, although as a supervisor of garage services, he was not eligible to vote in the election (1T115-1T116, 1T134-1T135, 1T139). When he got to the Lodge, Pilla did not observe anyone from 1199J, but about 15 minutes later he observed approximately ten to fifteen 1199J supporters blocking the driveway to the Lodge (1T115-1T116, 1T118-1T119). Among those he observed were Ebel and Martin. Pilla also noticed Dublin who he knew was a freeholder (1T117).^{8/}

8/ Pilla also testified that he saw Dublin aide, Charlie Mullins (1T117). Desmond also testified that he saw Mullins that night (1T32). Dublin and Martin denied that Mullins was there, explaining that they did not see him and that, in any event, he had a night job (1T279-1T280, 2T94). Based on this conflicting testimony, I cannot find that Mullins was present on March 22.

Pilla asked Dublin and the others if they could move out of the driveway because they were blocking people trying to enter (1T121, 1T130). Dublin told Pilla that he was a member of the Moose Lodge and had a right to be there (1T133-1T134). This was the only thing Pilla heard Dublin say that night (1T139).

Pilla described his confrontation with Martin as follows:

A. Okay. Well, I had asked [Dublin], you know, have the people to move from the driveway because they're blocking it. Daryn [Martin] had stepped in and told me that they're staying there and it doesn't matter what I say or do. I don't remember exactly what was said between me and him. And it turned out to be where it was a shouting match and he said I had a big mouth for a small guy. So I walked away. I had one of the members, 1199J members, that was at the meeting with me and I had them call the police and the police showed up (1T122).

Pilla asked Local 322 supporter Paul Selleti to call the police because, in his opinion, 1199J was blocking the driveway (1T138, 1T153, 1T182).

Pilla went into the Lodge until the police arrived about 10 to 15 minutes later (1T139). While he waited, Pilla stood at a table by the door where his wife was collecting papers for Local 322 (1T139, 1T143-1T144). He did not hear any other loud arguments or notice anything unusual from the time he entered the Lodge after the confrontation with Martin until the police arrived (1T141). Specifically, Pilla did not see or hear either Desmond or Morales arguing (1T126, 1T129). According to Pilla, however, Dublin was present the approximately 30 minutes from the time Pilla arrived at the Lodge around 7:30 p.m. until the police

arrived and left 30 minutes later (1T126, 1T128-1T131). Pilla did not hear Dublin say anything other than that he was a member of the Moose Lodge (1T134). The police did not arrest Morales or Dublin nor did Morales press charges against Dublin (1T184). The meeting was then conducted without interference from the County or 1199J (1T184).

20. Dublin did not describe the argument between Pilla and Martin, but described the one confrontation he testified that he observed and/or was involved in that night.

Dublin arrived at the Lodge in a County vehicle and parked on the street. At this time, Dublin observed 1199J supporters on the sidewalk next to the driveway leading to the parking lot of the Moose Lodge (1T277). He recognized Ebel, because she was his shop steward when he was a member of 1199J (1T277-1T278). Dublin also saw Martin who was having a loud argument with Gerald McCann^{2/} (1T253-1T254, 1T272-1T273, 1T280). McCann had approached Martin earlier and told him that Martin had no business being at the Lodge. Martin disagreed, thus the two argued (2T74, 2T85-2T87).

Dublin walked over to Martin, got the constituent letter he came for from Martin, put it in his pocket and tried to calm Martin down. He told Martin to "relax", "let it go" and not to

9/ I take administrative notice that McCann was a former Mayor of Jersey City. The record does not reflect the reason that McCann was at the Moose Lodge that evening, although I infer from his challenge to Martin's presence that he was a supporter of Local 322.

say anything further to McCann (1T254, 1T272, 1T274, 2T72, 2T74-2T75).

Sometime after the Martin/McCann argument, when several Jersey City police officers arrived, Dublin spoke to them and told them the confrontation between Martin and McCann was over. Dublin left shortly thereafter (1T254, 1T257, 1T275). Before he left, however, Dublin went into the Moose Lodge, to say hello to the attendees at the meeting for a couple of minutes (1T258-1T259, 1T275).

Dublin estimates that from the time he arrived at the Moose Lodge until he left was approximately 15 minutes (1T261). He emphatically denied getting into any verbal confrontation with Morales during this time (2T78, 2T81).

21. Meyers, however, heard a "ruckus" - a lot of cursing - between Dublin and Morales. He had followed Desmond and Morales outside about 5 minutes after they went to investigate what was happening with the 1199J supporters outside the Lodge. Meyers observed Dublin and Morales standing face-to-face in the parking lot (1T150-1T151). To Meyers, Dublin appeared "not happy", "aggravated", and Morales was loud. It looked to Meyers that Dublin was going to strike Morales, although Meyers did not see Dublin raise his hands (1T150-1T152, 1T170-1T171, 1T174-1T175, 1T177, 1T189).

Meyers asked Dublin what he was doing at the Lodge (1T176-1T177). Dublin responded that he was there as a member of the Moose Lodge and then asked Meyers the same thing. Meyers

also responded that he was there as a member of the Moose Lodge and added that it was none of Dublin's business (1T178). Dublin did not respond to this statement (1T178).

At this point, according to Meyers, everyone stepped in to defuse the situation between Morales and Dublin, including Meyers, Desmond, Pilla, Ebel, and Martin (1T152, 1T179-1T180). According to Meyers, "[T]here was screaming all over the place there" (1T180-1T181). Then, Meyers heard Pilla get into a heated discussion with Martin (1T180). Everyone got involved in the verbal confrontation (1T152). Meyers admits even he was cursing (1T181).

Once the police arrived, Meyers went back into the Lodge for the meeting (1T153). Meyers never saw Dublin come into the Lodge (1T180).

22. Charging Party Anthony Lopez also heard the argument between Dublin and Morales, but did not recall the exact words. He only heard "something about fighting" and described Dublin as being upset and angry (1T86-1T87). Lopez confirmed that Desmond was present during the Dublin/Morales argument (1T86). Lopez stayed for the meeting at the Moose Lodge which lasted about an hour, but, according to Lopez, Dublin was not present at the meeting or afterwards (1T97).

23. Additionally, Desmond confirmed that there was a confrontation between Dublin and Morales. Desmond explained that he was talking amicably to Martin and Griffith when he heard Morales and Dublin cursing at each other (1T62). Desmond did not

hear Dublin say anything about Hudson County or 1199J to Morales; he just heard the men cursing at each other (1T62). Desmond then ran over with Martin and Griffith to break-up the fight (1T63).

Although Desmond felt it was a serious incident, Desmond did not pursue the matter with the police when they arrived nor did he file an unfair practice charge about the incident until May 8, 2006, after the April run-off election. He did, however, complain the next day - March 23 - to Personnel Director Sheil and Director Demlee who said they would look into it (1T44, 1T69, 1T78, 2T26).

Sheil confirmed that Desmond complained that Dublin had started a fight and that Dublin was handing out 1199J flyers (2T26). Although Sheil had no authority to take any action against Dublin who, as a freeholder, is an elected official and not employed by Hudson County, Sheil contacted Dublin about Desmond's accusations to find out what happened (2T14, 2T26). Dublin had not told Sheil before the March 22 meeting that he was going to be there (2T14-2T15). When Sheil called him on March 23 about Desmond's accusations, Dublin denied handing out flyers and emphatically denied starting a fight at the Moose Lodge (2T29-2T30).

24. Alfonso Morales described his confrontation with Dublin. Morales testified that Dublin confronted him, threw down his jacket, raised his fists and asked Morales whether he wanted to fight (1T192, 1T194-1T195). Desmond also testified that he saw Dublin take his jacket off and throw it on the ground (1T34).

Dublin and Martin both deny the incident as described by Morales and Desmond - e.g. Dublin throwing down a jacket and raising his fists (1T256, 2T78, 2T81). Dublin, in particular, testified as follows:

Q. Do you recall raising both of your fists in front of Alfonso Morales and say, "Yeah, you want to fight?" Do you remember doing that?

A. No way, No, no, no.

Q. No way because you're a freeholder?

A. Right, right.

Q. It's a public office where you're elected?

A. Right. And I work too hard to get to that position. My thing is I would not let nobody take away that position that I worked hard to get to that position. So, no way, I would not even fight in public or put my hands to attack anyone, no.

(1T256)

The origins of Morales' confrontation with Dublin are murky. Morales was in the Lodge for the meeting when he heard noises outside the Lodge. He went to investigate and saw 1199J flyers on cars in the parking lot (1T192-1T193). Morales became angry upon seeing a flyer on his own car (1T205). Morales then noticed Dublin, who he knew as a freeholder, about 30 feet away, across the street, getting out of his car and talking to Ebel and someone else. This was the first time since Morales arrived that he noticed Dublin. (1T194, 1T197, 1T199-1T200, 1T202, 1T204, 1T215, 1T217, 1T220).

Dublin and Morales had a history. When Dublin worked for the County road department before becoming a freeholder, he was Morales' supervisor (1T255, 1T260). Dublin and Morales did not get along during that period and had a confrontation when Dublin accused Morales of stealing a phone (1T260).

According to Morales, once he spotted Dublin across the street, Dublin walked toward him. It is here that Morales' testimony became confusing and unreliable. Morales contradicted himself on cross examination as to what, if anything, he said to Dublin after Dublin walked toward him, and what, if anything, Dublin said to him. For instance, Morales reversed himself several times as to whether he asked Dublin about putting flyers on the cars in the parking lot and then admitted that he could not remember what was said (1T207, 1T209, 1T217-1T218, 1T224-1T225).

Based on these witness accounts, I cannot find that a physical confrontation took place between Dublin and Morales as described by Desmond and Morales - Dublin throwing down his jacket and raising his fists, but I do not credit Dublin's testimony that he had no contact with Morales and did not even see Morales that night (1T256, 2T78, 2T81). Other witnesses - Meyers, Lopez and Desmond - testified credibly that the two were cursing at each other.

In any event, whether a jacket was thrown down or fists were raised is not material. Morales and Dublin had a history of bad blood dating back to the period when Dublin worked for the County as Morales' supervisor. I observed from Morales' demeanor that he has an excitable temperament and, therefore, infer that since Morales was upset over what he perceived to be Dublin's support of 1199J, together with Morales' anger over discovering an 1199J flyer on his own car, Morales confronted Dublin, and the two got

into what was, at the very least, a verbal argument which involved the two exchanging curses.

25. In addition to exchanging curses, Morales testified that he heard Dublin make statements outside the Lodge promising raises. In this regard, Morales testified:

A. [Dublin's] the one talking to the people around, "I gave you raise. We're going to give you some raise."

Q. You heard about a raise? I thought you said before that you heard about the raise when you were inside. You heard the noise about the raise.

A. No, we're talking about when he was outside aggravation with me.

Q. Who was he [Dublin] talking to about a raise?

A. Some people in there.

Q. Who were the people?

A. I can't remember.

Q. Did you ever see them before?

A. Today you can see people, tomorrow you don't see. (1T227)

Morales then changed his testimony as to when Dublin allegedly made these statements about giving a raise and never explained clearly to whom Dublin allegedly made these statements (1T234-1T235). He also confused the terms "raise in salary" and "raising fists" (1T232-1T233).

Dublin denied making any statements about a raise. He explained:

A. I made no promises because one thing about my position as a freeholder is the administrators that negotiate contracts, we ratify them and we vote on them. So as a freeholder I make no promises on increase and wages that comes from the administration. So no, I did not make no statement about that because I don't have the authority or that power to do that (1T261).

No other witnesses corroborated Morales' hearsay testimony regarding the statements allegedly made by Dublin. I, therefore, do not credit Morales' uncorroborated hearsay testimony and do not find that Dublin made statements on March 22 at the Moose Lodge about giving raises.

The April 28, 2006 Transportation to the Polls Incident

26. There were several poll locations for the April 28, 2006 run-off election between 1199J and Local 322 (1T36). Desmond voted at the road department Duncan Avenue polling site and supplied transportation to the poll for himself and other Local 322 supporters at the parks department, because it was a distance from where they worked, and he wanted to make sure they got to the poll before it closed (1T36-1T37). There was also a poll at the Annex where Director of Personnel Patrick Sheil works (1T36).

27. As Director of Personnel, Sheil handles all of the human resources duties in the County. He is the appointing authority responsible for the day-to-day personnel activities such as hiring, promoting, demoting, establishing salaries and negotiating labor contracts (2T5-2T6).

After the March election, Sheil received a telephone call from Director Oscar Aviles of the County correctional facility (2T6-2T7). Aviles explained that on March 31, a number of his employees left to vote but did not return to the jail in a timely fashion or did not return to work at all. The jail was a distance from the polling site (2T6-2T7, 2T12, 2T19-2T20, 2T30).

Aviles told Sheil he was concerned about the efficient running of the jail during the April run-off election (2T12).

To address this concern, Aviles suggested to Sheil that he provide transportation for voters to the Duncan Avenue polling site. The correctional facility already had 2 busses which were used to transport inmates in the morning and evening but were unused all day. Aviles reasoned that these busses could be used to transport the voters (2T8, 2T12).

Sheil approved the arrangement and then spoke to 1199J Public Sector Division Director Grisel Lopez and to UWA, Local 322 President of Stephen Sombrotto and got their approval for the transportation of corrections employees to the poll at Duncan Avenue. He did not notify Desmond (2T8-2T10, 2T31-2T33, 2T37).

28. Sheil did not observe anyone boarding the busses the day of the April run-off election at the correctional facility or getting off the busses at the Duncan Avenue polling site, but the transportation was offered to anyone at the correctional facility who wanted to vote (2T12, 2T19). According to Sheil, the County was neutral in the election and had no preference regarding who should win (2T13). Sheil communicated this sentiment to Anthony Lopez and Desmond prior to the March 31 election (2T15-2T16). On April 28, transportation was not provided to any other polling site or to any other voters other than those from the jail (2T20-2T21).

29. Grisel Lopez has been employed by 1199J since 1992 and was in charge of the election campaign on behalf of 1199J in

March and April 2006 (2T37, 2T44). On April 28, 2006, she observed the employees from the correctional facility getting on what she describes as vans or busses to vote in the run-off election (2T47-2T48). She did not see anyone from the County screening those boarding the busses - e.g. asking anyone how they were going to vote or instructing anyone how to vote (2T43-2T44).

30. Only one witness who was a voter transported to the Duncan Avenue poll on April 28 from the correctional facility testified as to his experience boarding and riding on a corrections van. Sergio Rossini is a data entry clerk employed by Hudson County and assigned to the correctional facility (2T52). On April 28, 2006, he learned from a co-worker that employees who wanted to vote would be met in front of the correctional facility and driven to the Duncan Avenue polling site to vote (2T53).

Rossini was transported to the facility in a corrections van driven by a corrections officer (2T53-2T54). Corrections officers were not eligible to vote and were in a different bargaining unit (2T54). When he boarded the van, there was no one from the County giving any instructions. Specifically, Rossini was not told he could only get on the van if he was an 1199J supporter nor did anyone ask him who he was supporting before he got on the van or told him how to vote (2T54, 2T56, 2T60).

Rossini rode in the van with various co-workers, including among others, T. Murreal, Joanne Sakorski, Mr. Pater, and Ms. Simms (2T55). Rossini was not wearing an 1199J t-shirt nor was

he given one (2T55-2T56). He did not observe anyone else on the van wearing one or putting one on during the ride over to the poll (2T56, 2T62-2T63).

There was joking and laughing on the van and some people were singing along with the radio music (2T61). Rossini did not hear any chanting of 1199J slogans when the bus arrived at the poll (2T60). When the van arrived at the site, everybody voted and after about 10 minutes, the employees got back on the original van with the same corrections officer driver for the ride back to the correctional facility (2T56-2T57).

Rossini was not subpoenaed to testify and was unaware of the unfair practice charge prior to receiving a telephone call from Ebel the day before the hearing that he would be testifying about the run-off election (2T57-2T59). He received permission from the County to appear at the hearing and returned to work immediately after testifying (2T59-2T60).

31. John Shea has worked for the County for 10 years and, for the past 2 years, has held the title of supervisor of garage services (1T108-1T109). His office is at the Duncan Avenue facility. Shea was present at Duncan Avenue on the day of the run-off election (1T109). He observed 2 County vans and a county jeep from the correctional facility pull up to drop off employee voters (1T110). Shea could not tell from what the voters were wearing which union they were affiliated with, but he did see them wearing what appeared to be blue County jail uniforms

(1T112). He also did not hear anything that they were saying. He was not paying attention (1T110-1T111).

32. Several other witnesses (Desmond, Pilla, Meyers, Anthony Lopez, and Richard Yuditsky), who were at the Duncan Avenue polling site on April 28 and observed the correctional facility vans/busses arrive, testified that all or some employees disembarking from the transportation were wearing 1199J t-shirts. A dress code in effect at the correctional facility prohibited certain types of clothing being worn by its civilian employees including t-shirts with or without a printed message (RU-3). Also, these witnesses heard employees chanting slogans in support of 1199J - "1199J all the way" (1T37, 1T51, 1T71-1T72, 1T74-1T76, 1T88, 1T92-1T95, 1T92-1T95, 1T123, 1T135-1T137, 1T154, 1T184, 1T186-1T188). Their testimony appears to contradict the testimony of Rossini and Shea who saw no t-shirts and/or heard no chanting. In actuality, however, it does not.

The record does not reflect how many trips were made by the busses/vans to and from the correctional facility on April 28 or whether these witnesses observed every bus/van that arrived at the poll. Rossini's transportation may have arrived before or after these observations were made. Shea may have observed different busses or vans from the other witnesses. In any event, the timing of the transportation and the numbers of busses/vans observed accounts for the variations in witness accounts. In essence, I credit Rossini and Shea's testimony as well as the testimony of the witnesses at the polling site who observed some

or all voters wearing 1199J t-shirts and chanting 1199J slogans when they arrived at the poll.

None of the witnesses, however, with the exception of Rossini and Grisel Lopez, were at the correctional facility when the voters got on the busses/vans. Neither Rossini or Grisel Lopez observed employees wearing the t-shirts or heard chanting when they boarded the busses. Therefore, I find that some employees may have donned t-shirts on the busses/vans and may have been chanting when they reached the Duncan Avenue poll.

33. Finally, Grisel Lopez denied that she or anyone at her direction distributed 1199J blue T-shirts to any County employees prior to or for the April 2006 election (2T37, 2T40). She did, however, place two orders for t-shirts after the April run-off election for an issue that arose at Morris View Nursing Home, another county facility (RU-4; 2T40, 2T50). 1199J has also distributed 1199J t-shirts to its members over the years for various occasions, like rallies, to show support (2T46-2T47). I do not find that the fact that Lopez had not ordered t-shirts specifically for the run-off election or distributed them for this purpose means that 1199J supporters did not already have such t-shirts from previous elections or rallies or that they were not wearing those t-shirts on April 28 when they went to vote at the Duncan Avenue poll. I have credited the testimony of several witnesses who observed voters getting off of the corrections vans/busses wearing 1199J t-shirts.

ANALYSIS

Charging Parties assert that 1199J and the County colluded illegally in two instances during recent representation elections: first, when Freeholder Dublin allegedly campaigned for 1199J outside a Local 322 campaign meeting on March 22, and, next, when the County provided busses on April 28 to transport 1199J supporters from the jail to the Duncan Avenue poll, excluding Local 322 supporters from the transportation. These actions, it asserts, violate 5.4a(1) and (2) and 5.4b(1).

Based on the record before me, I do not find that the County or 1199J violated the Act when transportation was provided on April 28 to employee-voters from the jail to the Duncan Avenue poll. As to Freeholder Dublin's appearance on March 22 at the Moose Lodge prior to the Local 322 meeting, I do not find that the County violated the Act because, although the evidence supports that Dublin went to the Lodge to support 1199J, he was not the public employer, its agent or representative at the time. I find, however, that 1199J violated 5.4b(1) based on the March 22 activities because its agent, Daryn Martin, orchestrated the appearance of a known freeholder, Dublin, at the Moose Lodge during the Local 322 meeting, thus, creating the impression that the County through Dublin supported the incumbent and telegraphing to attendees that the County was not neutral. These activities tended to interfere with the protected rights of unit employees to freely choose their majority representative.

CI-2006-47

Public employers, their representatives or agents independently violate subsection 5.4a(1) if their actions tend to interfere with employees' statutory rights and lack a legitimate and substantial business justification. Orange Bd. of Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986) Proof of actual interference, intimidation, restraint, coercion or motive is unnecessary. The tendency to interfere is sufficient. Mine Hill Tp.

5.4a(2) prohibits public employers from dominating or interfering with the formation, existence or administration of any organization. This provision is designed to protect bonafide employee organizations representing groups of public employees from improper employer activity which threatens the formation, existence or administration of the organization. Borough of Shrewsbury, D.U.P. No. 79-12, 5 NJPER 13 (¶10007 1978), aff'd P.E.R.C. No. 79-42, 5 NJPER 45 (¶10030 1979), aff'd 174 N.J. Super. 25 (App. Div. 1980), certif. den. 85 N.J. 129 (1980). While motive is not an element of an a(2) offense, there must be a showing that the acts complained of actually interfered with or dominated the formation, existence or administration of the employee organization. The type of activity prohibited must be "pervasive employer control or manipulation of the employee organization itself . . ." North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

Here, Dublin appeared at a campaign meeting run by Local 322, the challenger to the incumbent 1199J in a representation election. As a former County employee, Dublin had been a member of 1199J and accepted 1199J contributions in his run for County freeholder. After he was elected freeholder and no longer a County employee, Dublin hired an 1199J paid organizer, Daryn Martin, as his aide and chief of staff to run his office.

Although Dublin and 1199J maintain that Dublin did not campaign on behalf of 1199J on March 22, that he was only there to collect a letter from Martin, I reject that purported reason. The letter did not require Dublin's signature, and neither he nor Martin explained why Dublin needed to pick up the letter that particular night at that particular time. This was not a legitimate business justification for Dublin to go to the Moose Lodge where a known campaign rally for Local 322 was taking place.

Moreover, if the real reason that Dublin appeared at the Lodge was to pick up the letter, he would have done so when he arrived, saw Martin standing in the street and left. Instead, Dublin retrieved the letter and stayed long enough - between 15 and 30 minutes - to break up an argument between Martin and McCann, to get into an argument with Local 322 supporter Alphonso Morales and to go into the Lodge where the Local 322 meeting was scheduled to greet attendees. It takes no leap of faith to conclude that Martin and Dublin knew Dublin's presence alone, as a Hudson County freeholder, standing outside the Lodge, and in

proximity to 1199J supporters would lead Local 322 supporters and other attendees at the campaign meeting to conclude that Freeholder Dublin and, by extension, the County, favored the incumbent 1199J. The evidence supports that those assumptions were drawn by Local 322 supporters.

The County takes the position that, even if Dublin went to the Moose Lodge to support 1199J, Dublin acted alone without foreknowledge or approval of anyone at the County, including Personnel Director Sheil. They assert he was not, therefore, acting as the public employer, its agent or representative. Charging Parties disagree. Thus, the issue before me remains whether Dublin as an elected official, a County freeholder, was the public employer or was an agent or representative of the public employer under these circumstances.

Under the Act, a public employer, its agents or representatives are prohibited from various activities constituting unfair practices in regard to public employees and their representatives. N.J.S.A. 13A-5.4. N.J.S.A. 34:13A-3(c) and (e) defines employer and representative and state in pertinent part:

(c) The term 'employer' includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification . . . This term shall include 'public employers' and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or

any authority, commission, or board, or any branch or agency of the public service.

(e) The term 'representative' . . . shall include any organization, agency or person authorized or designated by a public employer, public employee, group of public employees, or public employee association to act on its behalf and represent it or them.

In Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 85-110, 11 NJPER 307 (¶16109 1985), the Commission considered whether an individual school board member was a public employer or acted on behalf of the public employer when he approached two unit employees during negotiations and asked whether they would agree to accept a pay cut and threatened one employee with the loss of her job. The Commission concluded that the Board did not violate the Act. First, it found that the individual Board member was not a public employer within the meaning of the Act because he could not bind the Board as an entity to a particular course of action. The Commission also determined that the individual Board member did not act with the employer's knowledge or ratification and, thus, did not possess actual authority to act as an agent or representative of the Board. Finally, the Commission determined that because the individual Board member's conversations and meetings with the employees were not within his normal duties, he had no apparent authority to represent the Board.

The matter before me bears distinct similarities to the Commission's findings in Matawan-Aberdeen. Under the Optional County Charter Act, N.J.S.A. 40:41A-1 et seq., in Hudson County, the County Executive and the Board of Chosen Freeholders,

constituting 9 freeholders, make up the governing body of the County. Dublin, as an individual freeholder, cannot act independently to bind the County to a particular course of action. He is not, therefore, the public employer under our Act.

Additionally, under the circumstances of this matter, Dublin did not act directly or indirectly on behalf of or in the interest of the County or with the County's prior knowledge or ratification. There is no evidence that the County Executive, any other Hudson County Freeholder, Personnel Director Shiel or other County officials were aware of or condoned Dublin's activities on March 22 before or after the fact. I cannot draw such an inference from the evidence in the record.

Also, Dublin was not the County's agent nor did he have apparent authority to act on behalf of the County. In Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), the Commission found a Board of Education liable for the actions of its superintendent and president who were acting within the scope of the authority delegated to them by the Board and their apparent authority as Board agents. Specifically, the superintendent's normal duties included evaluating employees and discussing evaluations with the Board. He wrote a letter threatening the union president with dismissal and shared his concerns with the Board. The Commission determined that the letter was in retaliation for the union president's protected activity. As to the Board President, his threats occurred at

negotiations sessions at which he was participating as a Board representative.

Unlike Commercial Tp., it was not within Dublin's scope of authority or responsibilities as a County freeholder to appear at a campaign meeting conducted by Local 322 and/or to campaign on behalf of the incumbent majority representative. Therefore, his activities on March 22 are not attributable to the County because they were not impliedly authorized or within the apparent authority of Dublin's duties and responsibilities as a freeholder.

Nor can I find that on March 22 Dublin was acting as a representative of the County.^{10/} He was not authorized or designated by the County to act on its behalf in the matter of the representation election being conducted by the Commission. Personnel Director Shiel and the County's counsel represented the County in the representation election. Shiel's concern was to maintain the County's neutrality in the representation proceeding. When Patrick Desmond telephoned Shiel on March 23 with an accounting of Dublin's activities on March 22, even though Shiel had no authority to take an action against a County freeholder, Shiel called Dublin to find out if Desmond's

^{10/} Charging Parties cite four cases in support of its assertion that Dublin was acting as the County's representative. These cases are inapposite. The cited cases date to the early 1800s and pre-date the Optional County Charter Act creating Hudson County's current form of government and defining the power and authority of elected freeholders.

accounting was accurate. Once Dublin denied campaigning for 1199J and getting into a fight, Shiel dropped the matter.

As to the allegation of a 5.4a(2) violation, there is no evidence that the County subsequently permitted or encouraged any other activities by Dublin or any other County official in support of 1199J. Therefore, Charging Parties have not established the kind of pervasive employer control or manipulation of Local 322 required to establish a violation under this subsection. See Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764, 765 (¶17291 1986) (where Commission determined domination exists when organization directed by employer prevented employee organization from functioning independently, but interference involves less severe misconduct than domination).

Based on the foregoing, I, therefore, do not find that the County violated 5.4a(1) or (2) of the Act when Dublin went to the Moose Lodge on March 22.

As to the allegations involving the April 28 run-off election and transportation provided by the County to the Duncan Avenue polling site for employees at the County jail, the evidence supports that the County acted appropriately. The County demonstrated a legitimate business justification for its actions, namely the concern of Director Aviles in the orderly functioning of the jail facility and employee-voters returning promptly to the jail after voting. This rationale justified the County's decision to use corrections busses and/or vans to

transport any employee desiring to vote during the run-off election.

Charging Parties contend that Sheil should have communicated the County's decision to provide the transportation from the jail to Desmond, as a "primary contact" for Local 322, and that his failure to do so compromised the County's neutrality. I disagree. The County demonstrated a legitimate business justification which supported its decision to provide transportation with or without approval of or notification to the unions. Sheil, however, did notify and get approval from both unions through their representatives, namely Grisel Lopez for 1199J and Steven Sombrotto, as UWA President. The County had no additional or separate duty of notification attaching to Desmond as one of several Local 322 organizers or even as primary contact.

As to the transportation itself, no witness testified that the County prevented any employee who wanted to vote from getting on the County busses/vans or that the County even knew of or solicited voter preferences before employee-voters were allowed to board the busses/vans at the jail. To the contrary, one witness confirmed that he got on the bus with no interference or questioning by the County as to who he supported in the election. Additionally, the busses/vans were driven by corrections officers who were in a separate bargaining unit, not the 1199J bargaining unit, and not, therefore, eligible to vote. Presumably, as non-

unit employees, the drivers had no interest in the outcome of the election or in influencing voter choice.

Finally, the fact that some jail employees may have exited the busses/vans at the Duncan Avenue poll chanting their support of 1199J and/or wearing 1199J t-shirts does not establish that the County was not neutral or that it acted in concert with 1199J to provide the transportation only for its supporters. There is no evidence that the employee-voters were chanting or wearing the 1199J t-shirts, a violation of the internal corrections facility dress code, when they boarded the transportation at the jail and, therefore, there was no duty triggered on the part of the County to stop an activity of which they had no knowledge.

Based on the foregoing, I do not find that the County of Hudson violated 5.4a(1) and (2) of the Act when it provided transportation for corrections employees to the Duncan Avenue polling site on April 28.

CI-2006-46

Charging Parties allege that 1199J violated 5.4b(1) of the Act when 1199J organizer Daryn Martin arranged for Freeholder Dublin to campaign on its behalf at the Moose Lodge before the March 22 Local 322 meeting. 5.4b(1) prohibits employee organizations, their agents or representatives from interfering with, restraining or coercing employees in the exercise of their Section 5.3 rights, provided the actions lack a legitimate and substantial organizational justification. FOP Lodge 12

(Colasanti), P.E.R.C. No. 90-65, 16 NJPER 126 (¶21049 1990).

This sub-section of the Act mirrors the 5.4a(1) standard and like the latter does not require actual interference with employee rights, only the tendency to interfere. I find the evidence supports that 1199J violated 5.4b(1) when its agent, Daryn Martin, knowingly orchestrated Freeholder Dublin's appearance at the Local 322 Moose Lodge meeting.

Martin is a paid organizer for 1199J. He was acting within the scope of his authority when he went to the Moose Lodge on March 22 to observe, talk to attendees and campaign for 1199J. He had the apparent and actual authority to act on behalf of 1199J. It is not illegal for 1199J supporters or organizers to campaign on its behalf in a representation proceeding. Such organizational activity is protected under our Act. See generally, Warren Hills Reg. Bd. of Ed., P.E.R.C. No. 2005-26, 30 NJPER 439 (¶145 2004), aff'd 32 NJPER 8 (¶2 App. Div. 2006), certif. den. 186 N.J. 609 (2006); Mantua Tp., P.E.R.C. No. 84-151, 10 NJPER 433 (¶15194 1984); Glassboro Bor., P.E.R.C. 86-141, 12 NJPER 517 (¶17193 1986).

Charging Parties' assert that because Jersey City police arrived at the Moose Lodge, 1199J's presence went beyond mere campaigning and was, thus, illegal. Local 322 supporters contacted the police because they perceived that 1199J supporters were blocking the entrance to the meeting. The police arrived, briefly spoke to those present and left with no charges being

filed. Local 322's unilateral decision to summon the police does not transform 1199J's activities into illegal interference with the rights of employees to support Local 322.

Martin, however, arranged for Dublin to meet him at the Moose Lodge that night ostensibly to get a letter Martin prepared for a constituent. Retrieving the letter, however, was a pretext to get Dublin to the Moose Lodge, not a legitimate and substantial organizational justification. Even if no evidence supports that Dublin actually handed out 1199J literature or spoke with County employees regarding the election, his mere presence outside the Lodge on the sidewalk with 1199J supporters and with his chief of staff/1199J organizer Martin sent a silent message of support for the incumbent union to those attending the Local 322 meeting. Martin and Dublin knew that Dublin's appearance with 1199J supporters would lead those attending the meeting to conclude that Dublin as a County freeholder supported 1199J and that the County was not neutral in the up-coming election. Indeed, that is the conclusion drawn by Desmond and other witnesses who testified in this matter. Martin's actions as an agent for 1199J had a tendency to interfere with the rights of employees to freely choose their representatives and violated the Act.

Based on the foregoing, I recommend that the Commission find that 1199J violated 5.4b(1) when Daryn Martin orchestrated the

appearance of Freeholder Dublin at the March 22 Local 322 campaign meeting.

1199J asserts that even if Martin's and Dublin's activities on March 22 constitute a violation, Martin's actions constitute "harmless error" because the meeting occurred nine days before the initial March 31 election at which neither 1199J nor Local 322 received a majority of valid votes cast. The April 28 run-off more than six weeks after the March 22 incident, it contends, was more than enough time to cure any harm caused by Dublin's presence.

This argument goes to appropriate remedy and supports that, even though I have found a violation, no new election is warranted where the time between the illegal activity and the election was more than sufficient to allow Local 322 to correct any harm caused by Dublin's appearance at its meeting. The violation is a technical one, warranting only a posting.

In particular, the March 31 election took place a week after the incident at the Moose Lodge. No further illegal activity was alleged in that time period. Although it is difficult to judge the exact extent of the impact flowing from Dublin's appearance on March 22, the March 31 election resulted in more votes for Local 322 than 1199J suggesting that a majority of voters were not swayed by this incident. Certainly, six weeks later, any interference caused by Dublin's appearance at the March 22

meeting was cured in the days before the April 28 run-off election.

Finally, I have found no illegal activity in regard to the County providing transportation to the Duncan polling site on April 28 and, therefore, no illegal activity on the part of 1199J regarding that allegation. I recommend, therefore, that the Commission dismiss 5.4b(1) allegations concerning transportation to the April 28 poll.

CONCLUSIONS OF LAW

I recommend the Commission dismiss the 5.4a(1) and (2) violations.

I recommend the Commission find that 1199J did not violate 5.4b(1) by interfering with employee rights during the April 28 run-off election by accepting transportation for employee-voters to the Duncan Avenue polling site.

I recommend the Commission find that 1199J violated 5.4b(1) of the Act when an 1199J organizer, Daryn Martin, orchestrated the appearance of Freeholder Dublin at the Moose Lodge prior to the March 22 Local 322 campaign meeting.

RECOMMENDED ORDER

I recommend the Commission ORDER Respondent 1199J to:

A. Cease and desist from:


1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act,

particularly by soliciting the assistance of Freeholder Dublin at a Local 322 campaign meeting on March 22.

B. Take the following affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, thereafter being signed by the Respondents' authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.



Wendy L. Young
Hearing Examiner

DATED: October 2, 2007
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by October 12, 2007.



AMENDED

NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our unit members that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by soliciting the assistance of Freeholder Dublin at a Local 322 campaign meeting on March 22.

Docket No. CI-2006-046

District 1199J NUHCE, AFSCME, AFL-CIO
(Majority Representative)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372