

D.R. No. 2011-5

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

In the Matter of

MONMOUTH COUNTY,
OFFICE ON AGING,

Public Employer,

-and-

CWA LOCAL 1087,

Docket No. RD-2010-008

Intervenor,

-and-

PATRICIA M. JOHNSON,

Petitioner.

SYNOPSIS

The Director of Representation orders that six ballots received in our post office box after the original due date in an election should be counted. An investigation revealed that the ballots were mailed and received in the post office with enough time to be placed in our box before the due date. The post office accepted responsibility for the error.

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Appearances:

For the Public Employer,
Steven W. Kleinman, Special County Counsel

For the Intervenor,
Weissman & Mintz, LLC
(Steven P. Weissman, of counsel)

For the Petitioner,
Patricia M. Johnson, pro se

DECISION

On June 3, 2010, Patricia M. Johnson (Petitioner) filed a petition with the Public Employment Relations Commission (Commission), supported by an adequate showing of interest, seeking to decertify CWA Local 1087 (CWA) (Intervenor) as the majority representative of a unit of clerical and professional employees employed by Monmouth County, Office on Aging (County).

On July 20, 2010, I approved the parties' consent agreement for an election. The consent agreement provided that the mail ballots had to be received in our post office box by 9:00 a.m. on Monday, August 16, 2010.

At the above-appointed time and date a Commission staff agent collected all the envelopes (ballots) in our box. Of 25 eligible voters, 17 envelopes (ballots) were delivered to our box on August 16. Those ballots were counted later on August 16, and the tally showed 9 votes for CWA and 8 votes against representation. In accordance with N.J.A.C. 19:11-10.3, and noting that no objections were filed regarding the conduct of the election, on August 24, 2010, I issued a certification of representative naming CWA as the majority representative of the affected employees.

On Wednesday, August 25, 2010, a staff agent retrieving envelopes (ballots) from our mailbox in an unrelated election matter found seven envelopes in our box regarding the above-captioned election. One envelope was postmarked August 9, three were postmarked August 10, two were postmarked August 11 and one was postmarked August 12, 2010. One of the seven envelopes also had a round, red BRM (business reply mailer) stamp on it showing that the cost for mailing these envelopes (ballots) were charged to PERC's account on August 12, 2010. The parties were advised that while the additional ballots were not in our box on August 16 at 9:00 a.m. when the 17 ballots were collected, neither we

nor the Trenton Post Office can confirm when those ballots were placed in our box. We did not check our box between August 16 and August 25, but the seven envelopes were retrieved from our box on August 25 at 9:00 a.m. We telephoned a Trenton Post Office official at that time for an explanation as to why those ballots were not placed in our post office box by the morning of August 16, but no satisfactory explanation was provided.

The parties were advised about these seven additional ballots on August 27, 2010. By letter of September 13, 2010, the parties were advised that one of the newly discovered envelopes was void because it was not signed by the employee. The parties were asked to submit their positions on whether the remaining six ballots should be counted. The County and the Petitioner requested that the ballots be counted.

The CWA by letter of October 3, 2010 opposed counting the additional ballots. It argued that absent a showing of extraordinary circumstances, such as existed in Rutgers, The State University, D.R. No. 2000-12, 26 NJPER 241 (¶31095 2000), req. for review den., P.E.R.C. No. 2000-101 27, NJPER 1 (¶32000 2000), (the Commission counted additional ballots when the post office inadvertently misplaced ballots that had arrived prior to the due date) the Commission should not change its normal procedure and the additional ballots should not be counted. The CWA argued that in Rutgers, the Director had met with the Trenton Postmaster and the investigation revealed that ballots were

inadvertently misplaced and not immediately directed to the Commission's post office box upon their receipt in the post office. That investigation also revealed that there was no evidence of fraud or ballot tampering by postal employees and the ballots were in the post-office at the time of the count.

The CWA contends that in this case no evidence suggests that the additional ballots were "inadvertently misplaced" or that the ballots were in the post office on August 16, 2010. It argues that absent proof similar to that revealed in Rutgers, the ballots should not be counted.

In deference to the CWA's position and wanting to be fair to the parties and the process, by letter of October 7, 2010, I wrote that I would meet with postal officials and conduct a more thorough investigation of this matter. On October 14, 2010 I met with officials of the Trenton Post Office. They examined the seven additional ballot envelopes, explained how such envelopes are processed and how and when they are directed to our post office box. Based upon a review of the envelopes, discussion with several post office employees and an examination of their process and facility, the Trenton Post Office informed me that the seven envelopes were processed in their BRM section on August 12, 2010.

The Post Office Customer Service Manager certified:

Based on our records these pieces should have been in your PO Box prior to the election cut off date of August 16, 2010. The seven envelopes were dispatched to the delivery

office however due to unknown reasons the letters were delayed in reaching their destination. No improper handling was identified. The delay appears to have been in the postal service dispatch and transportation system.

Based upon the investigation, I find that the seven ballots were delivered to the Trenton Post Office before August 16, but that inadvertent and unintended mishandling diverted the ballots from our post office box.

As expressed in Rutgers, the purpose of a representation election is to give public employees the free and fair choice to decide whether they wish to be represented by a labor organization. Where, as here, voters, acting responsibly, mailed their ballots on time to be counted, they had a reasonable expectation that their ballots would be received in a timely manner and counted. Since these ballots were discovered within days of the actual count, to best effectuate voter choice, and noting that the election results will be determined by these ballots, they must be counted.

As the Commission noted in its Rutgers decision:

In a situation where the postal service misplaced a significant number of ballots, no option on how to proceed would have been perfect. Counting the ballots was the best option among the imperfect solutions. Id.

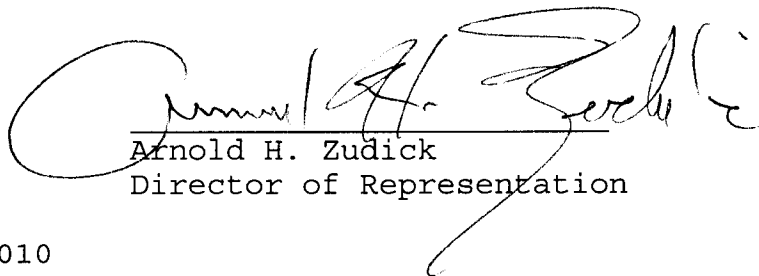
The Commission counted the ballots in Rutgers, and that same result is appropriate here for the same reason.

Although the number of ballots in question is relatively small, they will determine the results of the election.

Based upon the above discussion, we will conduct a count of the six remaining ballots and add them to the tally of ballots completed on August 16, 2010. If the results of the revised tally shows that the employees wish to be represented by the CWA, a revised certification shall issue certifying the CWA as majority representative. If the results of the revised tally is that employees prefer no representative, a certification of results shall issue.

ORDER

A Commission election agent will conduct a count of the six remaining ballots at the Commission's Trenton office on November 23, 2010 in accordance with N.J.A.C. 19:11-10.3.^{1/}



Arnold H. Zudick
Director of Representation

DATED: November 4, 2010
Trenton, New Jersey

A request for review of this decision by the Commission may be filed pursuant to N.J.A.C. 19:11-8.1. Any request for review must comply with the requirements contained in N.J.A.C. 19:11-8.3.

Any request for review is due by November 15, 2010.

^{1/} The count will take place at the Commission's Trenton office on November 23, 2010 at 1:30 p.m.