

D.R. NO. 2014-4

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

In the Matter of

OCEAN COUNTY LIBRARY,
Public Employer,

-and-

Docket No. RO-2013-032

OCEAN COUNTY LIBRARY EMPLOYEES
ASSOCIATION (NON-SUPERVISORS),
Petitioner,

-and-

GOVERNMENT WORKERS UNION,
Intervenor.

SYNOPSIS

The Director of Representation dismisses an election objection filed by the Government Workers Union (GWU) seeking to set aside the results of an election of non-supervisory employees of the Ocean County Library. GWU contended that the Library's supervisory employees interfered with the election of those they supervise. Specifically, GWU asserted that the supervisory employees held meetings with and sent e-mails to non-supervisory employees in an effort to affect the non-supervisory employees' choice of representative. In dismissing this objection, the Director explained that GWU failed to present sufficient evidence to support a prima facie case that the non-supervisors' freedom to choose a majority representative was influenced by the purported e-mails and meetings. The Director noted that the certification submitted by GWU was speculative and was not based on first hand knowledge from a voter in the non-supervisors' election or a member of the non-supervisors' unit.

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Appearances:

For the Public Employer
Citta, Holzapfel & Zabarsky, attorneys
(John J. Mercun, of counsel)

For the Petitioner
The Law Offices of Richard M. Greenspan, P.C.
(Gary P. Rothman, of counsel)

For the Intervenor
David L. Tucker, President

DECISION

On July 17, 2013, we conducted two secret ballot elections among separate collective negotiations units of non-supervisory and supervisory employees of the Ocean County Library (Library). On July 23, 2013, the Government Workers Union (GWU) filed timely objections to the secret ballot election conducted among non-

supervisory white collar professional Library employees.

N.J.A.C. 19:11-10.3(h).

GWU seeks to set aside the results of the election among non-supervisors, contending that the Library's supervisory employees interfered with the election of those they supervise. GWU contends that the supervisory employees held meetings with and sent e-mails to non-supervisory employees in an effort to affect the non-supervisory employees' choice of representative. Attached to its initial filing, GWU provided several documents which it characterized as having been issued from certain supervisory unit employees to certain non-supervisory unit employees. Specifically, the printed emails provide, "From: Smith, Jolene" and "To: Smith, Jolene" and had no other name in their headings. GWU did not provide any affidavits or certifications in its initial filing.

On July 24, 2013, the Director of Representation wrote to GWU and requested "sufficient evidence in the form of affidavits or other documentation that 'precisely and specifically shows that conduct has occurred which would warrant setting aside the election as a matter of law.'"

On July 26, 2013, GWU filed additional documents which were referred to as e-mails, as well as a certification by GWU President David L. Tucker (not employed by the Library), dated July 23, 2013. Tucker certifies that "upon information and

belief, the Ocean County Library supervisors unit employees meaningfully and actively participated in, interfered with, and dominated the election process of the non-supervisory bargaining unit." He states that several emails were "evidence and proof by Librarians or directly sent to [his] email by the author." Mr. Tucker also asserts that the Commission erred by refusing to stay the election at GWU's request pending its appeal of the Director of Representation's determination to order an election.^{1/} He further alleges that both GWU and the Ocean County Library were denied "information by the Commission and an opportunity to participate in the counting of the ballots." GWU did not provide certifications or affidavits of any employee of the Ocean County Library.

On July 29, 2013, the Director of Representation wrote to the Petitioner, Ocean County Library Employees Association (OCLEA) inviting its response to GWU's objections. On July 30, 2013 OCLEA filed a letter seeking dismissal of GWU's objections. OCLEA maintains that GWU failed to submit authenticated evidence supporting its objections, asserting that the evidence presented by GWU consists of a "series of speculations which GWU, without any foundation whatsoever, alleges constitute a sufficient basis upon which to set aside the election results." OCLEA further

^{1/} On August 7, 2013 GWU withdrew its appeal of the Director's decision (D.R. No. 2013-012).

submits that the purported e-mails provided by GWU contain nothing which would rise to the level of objectionable conduct as a matter of law, sufficient to warrant setting aside the results of the non-supervisors election. OCLEA notes that GWU presented no evidence in support of its allegation that PERC was bound to stay the election pending the determination of GWU's appeal to the Commission or that the election should be set aside due to PERC's denial of GWU's stay request. It further contends that GWU presented no evidence in support of its objection that PERC denied it and the Library information and an opportunity to appear and participate in the counting of ballots in the election.

Based upon my review of the matter, together with the parties' submissions, I find the following facts.

On December 20, 2012, the petitioner, OCLEA, filed a timely petition accompanied by an adequate showing of interest for an existing unit of supervisory and non-supervisory white collar employees. GWU properly intervened as the majority representative of the petitioned-for employees. On February 6, 2013, upon notification that the petitioner was seeking to represent an apparently inappropriate unit historically comprised of both supervisory and non-supervisory employees, OCLEA (Non-Supervisors) filed an amended representation petition seeking to represent non-supervisory white collar employees, OCLEA

(Supervisors) filed a representation petition seeking to represent supervisory white collar employees. GWU objected to the amended petitions and to the Supervisors' petition (Docket No. RO- 2013-037). In a decision dated May 13, 2013 (D.R. No. 2013-12), the Director of Representation dismissed GWU's objections and ordered two separate mail ballot elections. On May 28, 2013, GWU filed a request for review of this decision with the Commission.

On June 12, 2013, representatives from OCLEA, Ocean County Library and the assigned Commission election agent participated in a telephone conference to discuss the dates of the mail ballot election and format of the ballot. GWU did not participate in the call. On the same date, GWU filed a request to stay the elections pending the outcome of its request for review. On July 3, 2013, the Commission denied GWU's request to stay the elections, stating that "GWU has not demonstrated the factors for temporarily relief established in Crowe v. DeGioia, 90 N.J. 126 (1982)."

In a letter dated June 14, 2013, the Director of Representation advised all of the parties of the dates the ballots were to be sent out, as well as the time, place and date of the ballot count to be held on July 17, 2013. The ballot count was held on July 17, 2013 as scheduled. In the non-supervisory election, of seventy six (76) eligible voters, forty

four (44) ballots were cast with the following results: votes cast for OCLEA: thirty nine (39); votes cast for GWU: four (4); votes cast against participating employee representatives: one (1). In the supervisory election, of twenty one (21) eligible voters, sixteen (16) ballots were cast with the following result: votes cast for OCLEA (Supervisors): sixteen (16); votes cast for GWU Supervisors' Council 10: zero (0); votes cast against participating employee representatives: zero (0). The parties were served with the tally of ballots on July 17, 2013.^{2/} On July 23, 2013, GWU filed timely objections to the non-supervisory election. OCLEA filed its response on July 30, 2013.^{3/}

ANALYSIS

In Bloomfield Tp., D.R. No. 2001-2, 27 NJPER 18, 20 (¶32011 2000), the Director of Representation wrote:

Elections conducted by the Commission carry a presumption that the voter's choice in a secret ballot election is a valid expression of the employees' representational wishes. Thus, allegations of what may seem to be objectionable conduct must be supported by evidence that the alleged misconduct interfered with or reasonably tended to interfere with the employees' free choice.

^{2/} On July 25 2013, the Director of Representation issued a Certification of Representative for the supervisors' election.

^{3/} Multiple non-solicited submissions were made by both OCLEA and GWU between July 23, 2013 and August 5, 2013. The arguments made by the parties in these submissions are not relevant to the resolution of GWU's objection, and consist of opinions and argument rather than fact.

The objecting party must establish, through its evidence, that a direct nexus existed between the alleged objectionable conduct and the freedom of choice of the voters. City of Jersey City and Jersey City Public Works Employees, P.E.R.C. No. 43, NJPER Supp. 153 (¶43 1970), aff'd sub nom. Am. Fed. of State, County and Municipal Employees, Local 1959 v. PERC, 114 N.J. Super. 463 (App. Div. 1971), citing NLRB v. Golden Age Beverage Co., 415 F.2d 26, 71 LRRM 2924 (5th Cir. 1969); Hudson Cty. Schools of Technology, D.R. No. 99-14, 25 NJPER 267, 268 (¶30113 1999).

The Director must review the objections and supporting evidence to determine ". . . if the party filing objections has furnished sufficient evidence to support a prima facie case." N.J.A.C. 19:11-10.3(I). See also, Passaic Valley Sewerage Commission, D.R. No. 2011-7, 37 NJPER 122 (¶35 2011). The veracity of the proffered evidence is assumed. Passaic Valley Sewerage Commission. If the evidence does not sufficiently support a prima facie case, the Director may dismiss the objections immediately. Id. Only where sufficient evidence is submitted will the Director investigate the objections. Id., citing State of N.J. and NJSEA a/w AFT, CWA, AFSCME and NJCSA, P.E.R.C. No. 81-112, 7 NJPER 189 (¶12083 1981), P.E.R.C. No. 81-127, 7 NJPER 256 (¶12115 1981), aff'd NJPER Supp. 2d 123 (¶104 App. Div. 1982).

The standard of review of election objections contemplated by N.J.A.C. 19:11-10.3(I) was discussed in Jersey City Medical Center. D.R. No. 86-20, 12 NJPER 313 (¶17119 1986). There, the Director wrote:

This regulatory scheme sets up two separate and distinct components to the Director's evaluation process. The first is a substantive component: the allegation of conduct which would warrant setting aside the election as a matter of law. The second is a procedural or evidentiary component: the proffer of evidence (affidavits or other documentation) which precisely or specifically shows the occurrence of the substantive conduct alleged. Both of these components must be present in order for an investigation to be initiated. If this two-prong test is not met, the objections will be dismissed. [Id., 12 NJPER at 314]

In Jersey City Dept. of Public Works, P.E.R.C. No. 43, NJPER Supp. 153 (¶43 1970), aff'd sub nom. AFSCME Local 1959 v. P.E.R.C., 114 N.J. Super. 463 (App. Div. 1971), the Commission articulated the following policy:

The Commission presumes that an election conducted under its supervision is a valid expression of employee choice unless there is evidence of conduct which interfered or reasonably tended to interfere with the employee's freedom of choice. Conduct seemingly objectionable, which does not establish interference, or the reasonable tendency thereto, is not a sufficient basis to invalidate an election. The foregoing rule requires that there must be a direct relationship between the improper activities and the interference with freedom of choice, established by a preponderance of the evidence. [NJPER Supp. at 156.]

I have reviewed GWU's objections and supporting documents and find that it has not established a prima facie case as required by N.J.A.C. 19:11-10.3(h), nor has it met the standard established by Jersey City Dept. of Public Works.

GWU's submissions do not establish any objectionable conduct warranting our setting aside the non-supervisors' election as a matter of law. GWU submitted documents which it characterized as e-mails to substantiate its claim that the supervisory employees interfered with the election of those they supervise. These documents are not properly authenticated and I cannot find them of any probative value in the absence of any factual support as to who authored them and whether and by whom they were received. Even had these documents been properly authenticated, I do not find that their contents rise to the level of objectionable conduct warranting the setting aside of the election. There is nothing in the alleged e-mails which could be implicitly or explicitly construed as a threat or promise of benefits by the supervisors towards the non-supervisors.

GWU also characterizes as improper the Commission's refusal to accommodate its request to stay the elections pending the determination of its request for review. It merely asserts the Library and GWU were "denied information by the Commission and an opportunity to appear and participate in the counting of ballots in the election." However, GWU does not dispute that it received

the June 14, 2013 letter sent to all of the parties by the Director of Representation informing them of the dates the ballots were to be sent out and the time, date and place of the ballot count for both elections. Further, it does not cite authority for its positions or for its contention that the non-supervisors' election should be set aside for those reasons.

Additionally, GWU has not established a prima facie case of objectionable conduct that interfered with or reasonably tended to interfere with the free choice of voters in the non-supervisors' election. The Commission and Director have repeatedly held that affidavits not based upon personal knowledge of objectionable conduct which interferes with or reasonably tends to interfere with voter choice in an election are insufficient to make out a prima facie case. Passaic Valley Sewerage Commission, 37 NJPER at 124 (Deputy Director finds that certifications submitted in support of objections to an election did not make out a prima facie case since they were mere characterizations of events surrounding the election and were not based on the affiants' first-hand knowledge of those events); Bloomfield Tp., 27 NJPER at 21 (Director dismisses objections alleging election was "tainted" because it was conducted in-person, since no evidence was presented explaining how that method prevented voters from exercising their free choice or reasonably tended to interfere with their free choice).

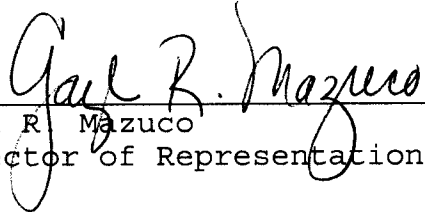
Affidavits that merely set forth a party's characterization of events are not sufficient to overturn the results of an election. Id.; see also, Fairview Bd. of Ed., D.R. No. 88-32, 14 NJPER 221 (¶19080 1988).

GWU did not provide any certifications based upon personal knowledge. The only certification filed was that of GWU president, David Tucker, who is not an employee of the Ocean County Library, nor a voter or non-supervisory unit member. There was no evidence provided by someone with personal knowledge indicating that the supervisors interfered with or reasonably tended to interfere with the free choice of voters in the non-supervisors' election. Likewise, there are no facts submitted showing how, even assuming that knowledge, the non-supervisors' freedom to choose a majority representative was influenced by the purported e-mails and meetings. The certification of Mr. Tucker is merely speculative.

Accordingly, I find that GWU has failed to establish a prima facie case, and dismiss its objections. The appropriate Certification of Representative is attached.

ORDER

The election objection is dismissed.



Gayl R. Mazuco
Director of Representation

DATED: August 16, 2013
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 August 26, 2013.

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DOCKET NO. RO-2013-032

CERTIFICATION OF REPRESENTATIVE

An election was conducted in this matter in accordance with the New Jersey Employer-Employee Relations Act, as amended, and the rules of the Public Employment Relations Commission. A majority of the voting employees selected an exclusive majority representative for collective negotiations. No valid timely objections were filed to the election.

Accordingly, **IT IS HEREBY CERTIFIED** that

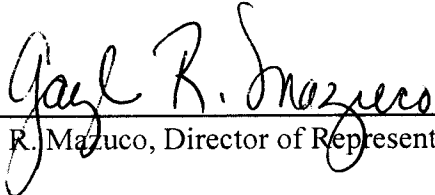
OCEAN COUNTY LIBRARY EMPLOYEES' ASSOCIATION (NON-SUPERVISORS)

has been selected by a majority of the employees of the above-named Employer, in the unit described below, as their representative for the purposes of collective negotiations, and that pursuant to the New Jersey Employer-Employee Relations Act, as amended, the representative is the exclusive representative of all the employees in such unit for the purposes of collective negotiations with respect to terms and conditions of employment. The representative is responsible for representing the interests of all unit employees without discrimination and without regard to employee organization membership. The representative and the above-named Employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment as required by the Act.

UNIT: Included: All regularly employed part-time and full-time non-supervisory white collar professional employees employed by the Ocean County Library.

Excluded: Managerial executives, confidential employees and supervisors within the meaning of the Act; craft employees, blue collar employees, non-professional employees, police, casual employees, and all other employees employed by the Ocean County Library.

DATED: July 25, 2013
Trenton, New Jersey



Gayl R. Mazuco, Director of Representation

Attachment:

Certification of Representative dated: July 25, 2013

In the Matter of

OCEAN COUNTY LIBRARY

-and-

OCEAN COUNTY LIBRARY EMPLOYEES' ASSOCIATION
(NON-SUPERVISORS)

-and-

GOVERNMENT WORKERS UNION

Docket No. RO-2013-032

Service on the following:

John J. Mercun, Esq.
Citta, Holzapfel & Zabarsky
248 Washington Street
Toms River, New Jersey 08754

David Tucker, National President
Government Workers Union
12 South Second Street
PO Box 664
Hammonton, New Jersey 08037

Gary Rothman, Esq.
Law Offices of Richard M. Greenspan, PC
220 Heatherdell Road
Ardsley, New York 10502