

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

In the Matter of

COUNTY OF MONMOUTH,

Public Employer,

-and-

LOCAL 56, UFCW, AFL-CIO,

DOCKET NO. RO-81-218

Petitioner,

-and-

MONMOUTH COUNCIL 9, NJCSA,

Intervenor.

SYNOPSIS

The Director of Representation dismisses objections filed by Local 56, UFCW, AFL-CIO to elections held in the following units of employees of the County of Monmouth: (1) non-supervisory white collar employees of the county clerk and (2) non-supervisory white collar employees. The Director specifically finds that Local 56 failed to produce evidence to support an allegation that a challenge of the eligibility of two voters through an employer representative was conduct that rendered a free choice of voters improbable and was conduct that would warrant setting aside the election. The Director also finds that the omission of an insubstantial number of names from the election eligibility list supplied the employee organizations was not conduct which would warrant setting aside the election. The Director therefore issued the appropriate certification of results of the elections.

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
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-and-

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Docket No. RO-81-218

Petitioner,

-and-

MONMOUTH COUNCIL 9, NJCSA,

Intervenor.

Appearances:

For the Public Employer
Meagher & Hrebek, Esqs.
(Robert J. Hrebek, Esq.)

For the Petitioner
Hott, Goodman, Kropf, Margolis & Hernandez, Esqs.
(Timothy R. Hott, Esq.)

For the Intervenor
Lomurro & Eastman, Esqs.
(Donald Lomurro, Esq.)

DECISION

The United Food and Commercial Workers Union Local 56, AFL-CIO ("Local 56") has filed post-election objections to two secret ballot elections conducted by the Public Employment Relations Commission (the "Commission") on July 27, 1981, in units comprised of (1) non-supervisory white collar employees of the county clerk of the County of Monmouth, excluding the judicial employees of the

county clerk ("County Clerk non-judicial unit") and (2) non-supervisory white collar employees of the County of Monmouth ("County white collar unit"). These two elections were held simultaneously, together with elections for four other negotiations units for which no objections have been filed and for which certifications have issued. ^{1/} The election in the County white collar unit and the election in the County Clerk non-judicial unit were held pursuant to an agreement for consent election dated July 10, 1981. Monmouth Council 9, NJCSA, participated in the County clerk non-judicial unit election. ^{2/}

The objections are the same as to each election and are as follow: (1) An election observer took notes during polling, left the polling place with her notes for an hour, and then resumed her observer role; (2) a representative of the employer called negotiations unit employees during polling and told the employees to vote against the Petitioner; (3) two Board of Health employees were given letters by their supervisors stating they should not be allowed to vote; and (4) the eligibility list provided by the County did not include all eligible voters: specifically, five employees were omitted from the list of eligible voters in the County white collar unit and one employee was omitted from the eligibility list for the County Clerk non-judicial unit.

On August 4, 1981, Local 56 was advised by the undersigned that, in accordance with N.J.A.C. 19:11-9.2(i) an investigation of

^{1/} Post-election objections were also filed concerning the unit of employees of the Monmouth County Surrogate's office but were withdrawn by mailgram on August 3, 1981.

^{2/} Council 9 did not intervene in the County white collar unit election. Council 9 has received notice of our consideration of the objections.

the objections to the election would not be conducted unless it furnished sufficient evidence in the form of affidavits or other documentation to support a prima facie case. The Commission agent assigned to the case was advised by the attorney for Local 56 that it would rely on the evidence that existed in the Commission's files in support of objections (3) and (4).

On September 8, 1981, Local 56 withdrew objections (1) and (2) and requested the undersigned to consider the remaining two objections which concern the Board of Health employees and the allegedly incomplete eligibility lists.

Local 56 raised objections concerning two Board of Health employees, whose eligibility to vote was challenged by the Board of Health. The objection states:

2 employees of the Board of Health were given letters by their supervisor which stated that they should not be allowed to vote.

On the day of the election the Commission election agent was presented with a memorandum from the Health Officer of the Board of Health, challenging the eligibility of two voters who were on the eligibility list of voters supplied by the County. The memorandum was delivered by the challenged voters to the Commission election agent at the polling place (see Attachment A). The Board of Health asserted that, as an autonomous agency, it was the employer of these two employees. The Commission election agent asserted the challenge to the ballots cast by the Board of Health employees. All challenge ballots in the July 27 election were resolved by the parties to the election, who agreed that all the ballots were cast

by eligible voters. All challenged ballots were then counted and revised tallies of ballots were issued in the elections in question herein (see Attachments B, C, D and E).

N.J.S.A. 19:11-9.2(e) provides:

(e) An observer or the election agent may challenge the eligibility of any person to participate in the election. Such challenge must be asserted prior to the time that a person casts a ballot and shall be recorded in writing specifying the name of the challenged person, the name of the challenging party, and the reason for the challenge. All persons whose names do not appear on the eligibility list maintained by the commission election agent shall automatically be challenged by the election agent. A challenged voter shall be permitted to vote and the ballot shall be sealed in an appropriate challenge ballot envelope after the voter marks the ballot, which sealed envelope shall thereafter be dropped in the ballot box. At the conclusion of the balloting, the parties may be provided the opportunity to resolve the challenged ballots, subject to the approval of the election agent.

The Commission's policies with respect to the conduct of elections are similar to the practices and policies of the National Labor Relations Board. ^{3/} The Board has determined that its elections should be held under "laboratory conditions." General Shoe Corporation, 77 NLRB 124, 21 LRRM 1337 (1948). The various types of objectionable conduct were extensively analyzed by the Commission in In re Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980). ^{4/} There is no evidence that any representative of the employer indicated that these employees

^{3/} The New Jersey Supreme Court stated in Lullo v. IAFF, 55 N.J. 409 (1970) that the Commission should utilize NLRB decisions and policies as a guide in its own decisions concerning representation matters. See In re Twp. of East Windsor, D.R. No. 79-13, 4 NJPER 445 (¶4204 1978).

^{4/} In Passaic the standard adopted was objectionable conduct can be based on either direct evidence of employer interference or reasonable inferences of interference which may be drawn from the facts.

should not be permitted to cast ballots. A Board of Health officer asserted a challenge to voter eligibility through the Commission agent. The challenge was asserted as provided in Commission rules. ^{5/} In fact, the employees did cast ballots and the employer subsequently agreed that these two employees were eligible voters and that their votes should be counted. No facts have been presented from which to infer that an atmosphere was created that rendered a free choice by the voters improbable. Accordingly, with regard to this objection, the undersigned finds that Local 56 has failed to furnish evidence that precisely and specifically shows that conduct has occurred which would warrant setting aside its election as a matter of law.

In the remaining objection, Local 56 claims that the lists of eligible voters provided by the County did not include all eligible voters.

In representation elections the public employer is required to file with the Director of Representation and with the participating employee organizations an election eligibility list of all voters together with their mailing addresses and job titles. N.J.S.A. 19:11-9.6. Representation elections conducted by the NLRB have the same requirement under the "Excelsior Rule." Excelsior Underwear, Inc., 156 NLRB 1236, 61 LLRM 1217 (1966). (The Excelsior rule was upheld by the Supreme Court in N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759, 89 S.Ct. 1426, 22 L.Ed. 2nd 709 (1969). The inadvertent omission of a small number of employees from the eligibility list is not considered by the Board a sufficient basis for invalidating an

^{5/} The Board held that the preparation and checking of an eligibility list does not constitute an agreement that precludes the possibility of challenges at the election, either as to names appearing on, or names omitted from, such list. O.E. Szekely and Associates, Inc., 117 NLRB 42, 39 LRRM 1151 (1957).

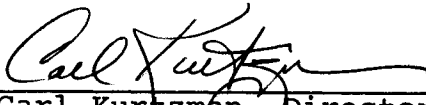
election. Jax Transportation, 131 NLRB 122, 48 LRRM 1038 (1961). Insubstantial failure to comply with the Excelsior rule will not warrant setting aside the election unless the employer has been grossly negligent or has acted in bad faith. ^{6/} Lobster House, 186 NLRB No. 27, 75 LRRM 1309 (1970). In determining whether Excelsior list omissions warrant the setting aside of an election, the Board compares the number of omissions with the number of voters the list should have contained (the Excelsior list plus the omitted names) to determine if there has been substantial failure to comply with the Excelsior rule. Chromalloy American Corp., 245 NLRB No. 119, 102 LRRM 1405 (1979). Generally, it appears that if the percentage of names omitted compared to the total number of voters is 9% or more the Board will set aside the election. See: Sonfarrel, Inc., 188 NLRB No. 146, 76 LRRM 1497 (1971) (9% found to be substantial error); Chromalloy American Corp, supra at 1415 (10.667% substantial) and Pacific Gamble Robinson Co., 180 NLRB No. 84, 73 LRRM 1049 (11% substantial). The Board has found the percentage of omission in the following cases not to constitute substantial error: Kentfield Medical Hospital, 219 NLRB No. 32, 89 LRRM 1697 (1975) (7% error not substantial enough to warrant setting aside the election); Advance Industrial Security, Inc. 230 NLRB No. 14, 95 LRRM 1209 (1977) (6% not substantial); West Coast Meat Packing Co., 195 NLRB No. 21 , 79 LRRM 1199 (1972) (4% not substantial). In Telonic Instruments, 173 NLRB No. 87, 69 LRRM 1398 (1968), the Board did not find a 3.6% omission to be substantial (4 names of 111 eligible) even though the union lost by only one vote.

^{6/} There are no allegations herein of gross negligence or bad faith.

In the County-wide unit five names were omitted from the list of 207 eligible voters, which constitutes a 2.4% error rate. In the County Clerk non-judicial unit, one of 29 eligible voters was omitted which constitutes a 3.4% error rate. Therefore, based on the policy and criteria enunciated by the NLRB, which are adopted as reasonable and applicable to the circumstances herein, the undersigned concludes that the County substantially complied with the Excelsior rule and that the omissions are not substantial enough to warrant setting aside the election.

Inasmuch as Local 56 has failed to furnish sufficient evidence to support a prima facie case which would warrant setting aside the election as a matter of law, the undersigned dismisses the objections filed by Local 56. In accordance with the rules of the Commission, the undersigned shall issue the appropriate certifications of results, attached hereto and made a part hereof.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: October 22, 1981
Trenton, New Jersey

The Monmouth County Board of Health

JUNE COUNTERMAN
President
LORRIANE CRONIN
Vice President
ROBERT W. DENMAN
Secretary

LESTER W. JARGOWSKY, M.P.H.
HEALTH OFFICER

17 Lafayette Place

FREEHOLD, NEW JERSEY 07728

Telephone: Area Code (201) 431-7456

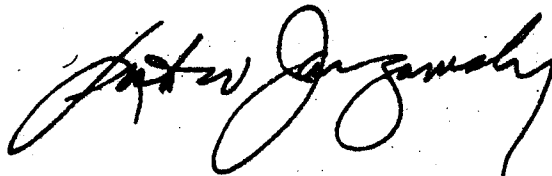
MEMORANDUM

TO: Ms. Susan Wood, PERC Election Supervisor
FROM: Lester W. Jargowsky, Health Officer
DATE: July 27, 1981
RE: Union Election, July 27, 1981, Monmouth County

Kindly allow this letter to serve as an official challenge of the eligibility of the following Monmouth County Board of Health employees to vote in this election:

Mrs. Peggy Ormsbee
Miss Mary Lovecky

The reason for this challenge is that these employees are employed by the County Board of Health that is an autonomous agency established pursuant to the Local Health Services Act N.J.S.A. 26:342-1 et seq. Due to the autonomous organization of this Board of Health, we feel that these employees are not eligible for this election. They may desire to establish their own bargaining unit exclusive of this County group.



Hand
Delivered
To Hall of
Records
on Election
Day 7/27/81
AHZ

ATTACHMENT A

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
County of Monmouth
(County-Wide Unit),

Public Employer,

-and-
Local 56, UFCW, AFL-CIO,

Employee Organization.

Docket No. _____
Date Issued July 27, 1981
Type of Election: (Check one)
 Consent Agreement
 Commission Direction
 DR Decision

TALLY OF BALLOTS

The undersigned agent of the Executive Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters..... 200
2. Void ballots..... 0
3. Votes cast for Local 56, UFCW, AFL-CIO 48
4. Votes cast for _____
5. Votes cast for _____
6. Votes cast against participating employee representative(s).. 45
7. Valid votes counted (sum of 3, 4, 5, and 6)..... 93
8. Challenged ballots..... 7
9. Valid votes counted plus challenged ballots (sum of 7 and 8). 100
10. Challenges are ~~not~~ sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for: Either Selection on the Ballot
Local 56, UFCW, AFL-CIO

FOR THE DIRECTOR OF REPRESENTATION

Susan L. Wood

Susan L. Wood, Election Officer

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

FOR
County of Monmouth
[Signature]

FOR
Local 56, UFCW, AFL-CIO
[Signature]

FOR

FOR

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Docket No. _____

Date Issued July 30, 1981

Type of Election: (Check One)

In the Matter of
 County of Monmouth
 (County-Wide Unit),

 Public Employer,

 -and-
 Local 56, UFCW, AFL-CIO,

 Employee Organization.

- Consent Agreement
- Commission Direction
- D.R. Direction

REVISED TALLY OF BALLOTS
 (Counting of Challenged Ballots)

The undersigned agent of the Director of Representation certifies this revised Tally of Ballots resulting from the counting of certain resolved challenged ballots, concluded on the date above.

	ORIGINAL TALLY	DETERMINED CHALLENGES	FINAL TALLY
Approximate number of eligible voters.....	200	7	207
Void ballots.....	0	0	
Votes cast for: <u>Local 56, UFCW, AFL-CIO</u>	48	2	50
Votes cast for: _____			
Votes cast for: _____			
Votes cast against participating employee representative.....	45	5	50
Valid votes counted.....	93	7	100
Undetermined challenged ballots.....	7		0
Valid votes counted plus challenged ballots.....	100		100

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are not sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has (not) been cast for any representation

For the Director of Representation

Susan L. Wood
 Susan L. Wood, Election Officer

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating and the compilation of the final tally were fairly and accurately done and that the results were as indicated above. We also acknowledge service of this Tally.

FOR County of Monmouth FOR Local 56, UFCW, AFL-CIO

FOR _____ FOR _____

Attachment C

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

County of Monmouth, County Clerk,
Public Employer,

-and-

Monmouth Council #9,
Employee Organization.

-and-

Local 56, UFCW, AFL-CIO,
Employee Organization.

Docket No. _____

Date Issued July 27, 1981

Type of Election: (Check one)

Consent Agreement

Commission Direction

DR Decision

CLM:ch

TALLY OF BALLOTS

The undersigned agent of the Executive Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters..... 29
2. Void ballots..... 0
3. Votes cast for Monmouth Council #9..... 1
4. Votes cast for Local 56, UFCW, AFL-CIO..... 11
5. Votes cast for _____.....
6. Votes cast against participating employee representative(s).. 13
7. Valid votes counted (sum of 3, 4, 5, and 6)..... 25
8. Challenged ballots..... 1
9. Valid votes counted plus challenged ballots (sum of 7 and 8). 26
10. Challenges are ~~not~~ sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for:

Any Selection on the Ballot

FOR THE DIRECTOR OF REPRESENTATION

Susan L. Wood

Susan L. Wood, Election Officer

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

FOR County of Monmouth

FOR Monmouth Council #9

Steve Hissail

FOR

FOR

Local 56, UFCW, AFL-CIO

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
County of Monmouth, Co. Clerk,
Public Employer,
-and-
Monmouth Council #9,
Employee Organization,
-and-
Local 56, UFCW, AFL-CIO
Employee Organization.

Docket No. _____

Date Issued July 30, 1981

Type of Election: (Check One)

- Consent Agreement
 Commission Direction
 D.R. Direction

REVISED TALLY OF BALLOTS
(Counting of Challenged Ballots)

The undersigned agent of the Director of Representation certifies this revised Tally of Ballots resulting from the counting of certain resolved challenged ballots, concluded on the date above.

	ORIGINAL TALLY	DETERMINED CHALLENGES	FINAL TALLY
Approximate number of eligible voters.....	28	1	29
Void ballots.....	0	0	0
Votes cast for: <u>Monmouth Council #9</u>	1	0	1
Votes cast for: <u>Local 56, UFCW, AFL-CIO</u>	11	0	11
Votes cast against participating employee representative.....	13	1	14
Valid votes counted.....	25	1	26
Undetermined challenged ballots.....	1		0
Valid votes counted plus challenged ballots.....	26		26

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are not sufficient to affect the results of the election.
A majority of the valid votes plus challenged ballots as shown in the Final Tally column has (not) been cast for any representation.

For the Director of Representation

Susan L. Wood
Susan L. Wood, Election Officer

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating and the compilation of the final tally were fairly and accurately done and that the results were as indicated above. We also acknowledge service of this Tally.

OR County of Monmouth

FOR Monmouth Council #9

OR

FOR Local 56, UFCW, AFL-CIO

Attachment C



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

County of Monmouth, County Clerk,
Public Employer,

-and-

Local 56, U.F.C.W., AFL-CIO,
Petitioner,

-and-

Monmouth Council #9,
Intervenor.

DOCKET NO. RO-81-218

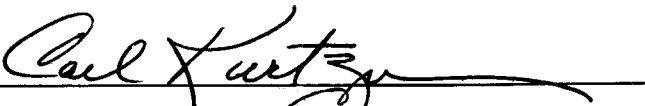
CERTIFICATION OF RESULTS OF ELECTION

An election having been conducted in the above matter under the supervision of the undersigned Executive Director in accordance with the Act and Chapter 11 of the Commission's Rules and Regulations and Statement of Procedure; and it appearing from the Tally of Ballots that no exclusive representative for collective negotiations has been selected; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned,

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast by the employees in the unit described below for any employee organization appearing on the ballot. There is no exclusive representative of all the employees within the meaning of the New Jersey Employer-Employee Relations Act of 1968.

UNIT: Non-supervisory white collar employees of the Office of the County Clerk, County of Monmouth excluding those employees performing functions necessary and integrally related to the Courts of Monmouth County, other employees of the County Clerk, other employees of the Judiciary, all other County employees, managerial executives, supervisors as defined by the Act, confidential employees, and other employees.


Carl Kurtzman, Director
of Representation

DATED: October 21, 1981

Trenton, New Jersey



STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

County of Monmouth,

Public Employer,

-and-

Local 56, U.F.C.W., AFL-CIO,

Petitioner.

DOCKET NO. RO-81-218

CERTIFICATION OF RESULTS OF ELECTION

An election having been conducted in the above matter under the supervision of the undersigned Executive Director in accordance with the Act and Chapter 11 of the Commission's Rules and Regulations and Statement of Procedure; and it appearing from the Tally of Ballots that no exclusive representative for collective negotiations has been selected; and no valid objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned,

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast by the employees in the unit described below for any employee organization appearing on the ballot. There is no exclusive representative of all the employees within the meaning of the New Jersey Employer-Employee Relations Act of 1968.

UNIT: Non-supervisory white collar employees employed by the County of Monmouth excluding employees of the Judiciary, employees of the Offices of the County Clerk, the Surrogate and the Sheriff, supervisors within the meaning of the Act, managerial executives, professional employees, police, employees in other negotiations units, employees of the Prosecutor.

Carl Kurtzman, Director
of Representation

DATED: October 21, 1981

Trenton, New Jersey